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## An Act to amend the Acts respecting Voters' Lists.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The second section of the Voters' Lists Act, chapter nine of the Revised Statutes, is amended by striking out the words, "final revision and correction of the assessment roll in every year," in the second and third lines of the said section, and substituting therefor the words, "return of the assessment roll by the assessors, every fourth year;" and by striking out sub-section nine of said section, and substituting therefor the following:—

"(9) The clerk shall, immediately after the return of the assessment roll by the assessors, in every year, except the years in which a quadrennial list, is made out, as aforesaid, make a correct alphabetical list in three parts, as aforesaid, similar in all respects to that above referred to, except that it shall contain the names of such male persons, as aforesaid, appearing by such assessment roll to be assessed for the real property or income requisite to entitle them to vote, as aforesaid, whose names were not entered in the voters' list for the previous year, or were entered in respect of other property, or a different qualification, and no other names whatever; and, also, a further alphabetical list (Form A) shewing all persons who, by the voters' list for the previous year appeared to be entitled to vote as therein stated, but who, by such assessment roll, appear to have ceased to be assessed for the real property or income requisite to entitle them to vote, as aforesaid, in such municipality, or to have ceased for any reason to be entitled to have their names on the voters' lists in respect of the qualification of the previous year;

"(10) The lists in the last sub-section mentioned, for any year, are hereinafter described as the "supplemental list," and the voters' list in any year shall be the last complete list of voters, as altered or added to by the supplemental lists, when finally certified by the county judge;

"(11) The words, "alphabetical list" in the "Voters' Lists Act," and in this Act, shall mean either the quadrennial list, above referred to, or the supplemental list, as the case may be;

"(12) The supplemental list shall be made out for the present year, and every year hereafter, except the years in which the quadrennial lists shall be made out; the quadrennial lists shall be made out in the year 1884, and every fourth year thereafter, and said supplemental and quadrennial lists shall be printed, published, and circulated in the same manner as heretofore;

"(13) An assessment roll shall be understood to be returned when it is completed and delivered by the assessor or assessors to the clerk of the municipality."

R. S. O., c. 9,  
s. 2, amended.

Sec. 3 amended. **2.** The third section of the Voters' Lists Act, is amended, by striking out the words "thirty days after the final revision and correction," in the second and third lines thereof, and substituting therefor the words "twenty days after the return."

County court judge may direct new list to be made out. **3.** Notwithstanding the provisions of this Act, it shall be lawful for the county judge, if he shall deem it expedient from the number of alterations in, or additions to, the voters' list in any municipality, and to prevent complications, to order the clerk to make out, in any year, in lieu of the supplementary list, an entirely new voters' list; Provided that such order is given within days after the return of the assessment roll, and after such new list is finally revised and corrected, the whole list shall be made out only every fourth year thereafter, unless the county judge otherwise order, but supplemental lists, as aforesaid, shall be made out in other years.

Sec. 8, sub-s. 1, repealed and new sub-section substituted. **4.** The first sub-section of section eight, of the said Voters' Lists Act, is hereby repealed, and the following substituted in lieu thereof:—

"The said list of voters shall be subject to revision by the court of revision and by the county judge, at the instance of any voter or person entitled to be a voter in the municipality for which the list is made or in the electoral district in which the municipality is situate, on the ground of the names of voters being omitted from the list, or being wrongly stated therein, or of names of persons being inserted in the list who are not entitled to vote; and, upon such revision, the assessment roll shall not be conclusive evidence in regard to any particular, notwithstanding that the matter on which the right to vote depends had been brought before the court of revision and had been determined by that court, but the decision of the judge, afterwards had, under the Voters List Act, in regard to the right of any person to vote, shall be final, so far as regards such person, but no matter on which the right to vote depends shall be reviewed by the county judge, unless the same shall have been previously brought before and adjudicated upon by the court of revision."

Sec. 8, sub-s. 4, amended. **5.** Sub-section four of said section number eight is hereby amended, by striking out the words "final revision and correction," in the fourth and fifth lines, and substituting therefor the words "return to the clerk," and by adding after the words "to the," in the sixth line, the words "court of revision, and if not put on by said court he shall be entitled to apply to the."

Sec. 8, sub-s. 5, amended. **6.** Sub-section five of said section eight is hereby amended by inserting after the word "apply" in the third line, the words "to the court of revision, and if there refused, then he shall have the right to apply."

Sec. 9 amended. **7.** Section nine is hereby amended, by striking out the words "thirty days after the clerk of the municipality has posted up the said list in his office," and substituting therefor the words "ten days after the expiration of the time allowed for appeals to the judge, under sub-section two of section fifty-nine of the Assessment Act."

8. The clerk shall make out a statement, under oath, of the alterations made at the court of revision, so far as such alterations affect the qualification of voters on the voters' list, and shall append thereto the names of all who by the action of the court of revision or county judge, under the provisions of section fifty-nine of the Assessment Act, are entitled to be added to such voters' list, and the voters' list, with such alterations and additions, shall constitute the voters' list for such municipality, unless subsequently altered by the county judge, on further appeal under the Act respecting voters' lists.

Clerk to prepare voters' lists.

9. Section eleven of said Voters' Lists Act is hereby amended by striking out the words "ten days after he has posted up the said list in his office," and the second and third lines of said section, and inserting in lieu thereof the words "ten days after the time allowed for appeals to the judge, under sub-section two of section fifty-nine of the Assessment Act."

Sec. 11 amended.

10. Section twenty of said Voters' Lists Act is amended by adding after the word "and," in the seventeenth line, the words "in case an appeal to the judge is not sustained, or in his opinion it is of a frivolous or vexatious character, the judge shall award costs against the appellant, and"

Sec. 20 amended.

11. It shall not be necessary for the clerk of any municipality to make out a manuscript copy of the voters' list for the annual or other municipal election, but the printed voters' list, with the certified copy of all corrections and additions made thereto, from time to time, by the court of revision and county judge, shall be the list furnished to each returning officer for a municipal election, and the returning officers shall be furnished by the municipal clerk, merely with a post book, without the names of voters being written therein.

Lists for municipal elections not required to be in manuscript.

12. All Acts and parts of Acts inconsistent with this Act are repealed, and the Voters' Lists Act, with the exception of the parts hereby or heretofore repealed, and the Voters' Lists Finality Act are hereby declared to be one Act.

Inconsistent enactments repealed.

13. This Act shall not apply to towns and cities.

Act not to apply to towns and cities.

### FORM A.

#### VOTERS' LIST, 18 , MUNICIPALITY OF

*Polling Sub-Division No.*

Names to be erased from Voters' List.

NAME.	Lot.	Con. or Street.	How qualified on Voters' List.	For what Election.	Why to be erased.
Wilson, James..	1	3	Owner	Municipal	Dead.
Anderson, John	N.W. $\frac{1}{2}$ 2	4	Income	Both	Not sufficiently assessed.
Smith, James ..	S $\frac{1}{2}$ 2	2	Farmer's Son	Both	Not assessed.
Jones, William.	N $\frac{1}{2}$ 3	3	do	Both	Father assessed as tenant only.

No. 68.

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2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to amend the Acts respecting  
Voter's Lists.

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First Reading, 31st January, 1881.

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Mr. NAIRN.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Liquor License Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section fifty-one of the said Act is hereby repealed  
5 and the following substituted therefor:—

R. S. O., c.  
181, s. 51, re-  
pealed and new  
section substi-  
tuted.

Any person who sells, or barter, spirituous, fermented or  
manufactured liquors of any kind, or intoxicating liquors of  
any kind, without the license therefor by law required, shall,  
for the first offence, on conviction thereof, forfeit and pay a  
10 penalty of not less than fifty dollars, besides costs, and not  
more than one hundred dollars, besides costs; and for the sec-  
ond or any subsequent offence, on conviction thereof, such per-  
son shall, in addition to the said penalty, be imprisoned in the  
county gaol of the county in which the offence was com-  
15 mitted, to be kept at hard labour, for a period of not less than  
three, and not more than six months; and any person who  
otherwise violates any other provision of the said Act, in respect  
of which violation no other punishment is, by the said Act, or  
by this Act, prescribed, shall, for the first offence, on conviction  
20 thereof, forfeit and pay a penalty of not less than twenty dol-  
lars, besides costs, and not more than fifty dollars, besides costs;  
and for the second offence, on conviction thereof, such person  
shall be imprisoned in the county gaol of the county in which  
the offence was committed, to be kept at hard labour, for a  
25 period not exceeding three calendar months.

2. The mayor or police magistrate of a town or city, or the  
reeve of a township or village with any one justice of the  
peace, or any two justices of the peace having jurisdiction in  
the township or village, may, upon any conviction for any of  
30 the offences mentioned in the first section of this Act, at any  
time within a month after such conviction, grant a warrant to  
search any dwelling house, store, shop, warehouse, out-house,  
garden, yard, croft, or other place or places, in, upon, or about  
which the intoxicating liquor, in respect of which such convic-  
35 tion was made, was sold or bartered without license as afore-  
said, and if any intoxicating liquors be there found, may ad-  
judge and order, in addition to any other penalty or punish-  
ment imposed, that such intoxicating liquor, (whether the same  
be, or be not, the property of such person,) or not more than  
40 twenty gallons thereof, if there be more of it than twenty gal-  
lons, be forfeited; and that any and all kegs, barrels, cases,  
boxes, bottles, packages and other receptacles of any kind what-  
ever, found containing the same, or not more than twenty gal-  
lons thereof, if there be more of it than twenty gallons, be

Order for  
search after  
conviction.

Intoxicating  
liquor found  
on premises to  
be destroyed.

broken up and utterly destroyed, and the said intoxicating liquor, or not more than twenty gallons thereof, if there be more than twenty gallons, poured out, spilled, wasted and utterly destroyed; and thereupon such barrels, kegs, cases, boxes, bottles, packages, and other receptacles of any kind whatever, to the extent aforesaid, shall be forthwith broken up and utterly destroyed, and the said intoxicating liquor, or not more than twenty gallons thereof, if there be more of it than twenty gallons, poured out, spilled, wasted, and utterly destroyed by the constable or peace officer executing the said warrant. 5 10

Section 52 repealed and new section substituted.

3. Section fifty-two of the said Act is hereby repealed, and the following substituted therefor:—

For punishment of offences against section forty-three of the said Act, a penalty for the first offence against the provisions thereof, of not less than fifty dollars, with costs, or thirty days' imprisonment, with hard labour, in case of conviction, shall be recoverable from, and leviable against the goods and chattels of the person, or persons, who are the proprietors in occupancy, or the tenants or agents in occupancy, of the said place, or places, who are found by himself, herself, or themselves, or his, her, or their servants or agents, to have contravened the enactment in the said forty-third section, or any part thereof; and for the second offence, a penalty against all such persons of not less than one hundred dollars, with costs, or sixty days' imprisonment, with hard labour; and, upon conviction for a second offence against the said forty-third section of the said Act, the license of any person who shall be so convicted, shall, upon such conviction, be, and stand revoked and cancelled, and shall, also, thereupon be, and become, inoperative and of none effect, and the person to whom such license issued shall thereafter, during the remainder of the then current year, and two years following after the expiration of such year, be disqualified from obtaining any further or other license under the said Act. 15 20 25 30

Times at which intoxicating liquors not to be bought.

4. In all places where intoxicating liquors are, or may be, sold by wholesale or retail, no purchase, or other procuring or obtaining of the said liquors shall take place therein, or on the premises thereof, or out of or from the same, by any person or persons whomsoever, from or after the hour of seven of the clock on Saturday night, till six of the clock on Monday morning thereafter, and during any further time on the said days, and any hours or other days during which, by any statute in force in this Province, or by any by-law in force in the municipality wherein such place or places may be situated, the same, or the bar-room or bar-rooms thereof, ought to be kept closed, save and except, in cases where a requisition for medical purposes, signed by a licensed medical practitioner, or by a justice of the peace, is produced by the vendee or his agent; nor shall any such liquor, whether sold or not, be drunk in any such places during the time prohibited by the said Act for the sale of the same, except by the occupant or some member of his family, or lodger in his house. 35 40 45 50

Penalties.

5. Any person violating any of the provisions of the fourth section of this Act, shall, for the first offence, on conviction thereof, forfeit and pay a penalty of not less than twenty dollars, besides costs, and not more than fifty dollars, besides costs;

and for the second offence, on conviction thereof, such person shall forfeit and pay a penalty of not less than forty dollars, and not more than one hundred dollars, besides costs, and, in default of payment thereof, shall be imprisoned, at hard labour, in the common gaol of the county in which the offence was committed, for the period of three calendar months.

6. Notwithstanding anything in the said Act contained, no appeal shall lie from a conviction for any offence against the provisions of the forty-third section of the said Act, or the first or fourth sections of this Act.

Appeals not allowed in certain cases.

7. All provisions of the said Liquor License Act inconsistent with this Act are hereby repealed.

Inconsistent enactments repealed.

BILL

An Act to amend the Liquor License Act.

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First Reading, 1st February, 1881.

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Mr. GIBSON, (*Hamilton*).

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

# JUDICATURE BILL.

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An Act to consolidate the Superior Courts; establish a uniform system of pleading and practice; and make further provision for the due Administration of Justice.

*(The English Judicature Acts are :*

- 36 & 37 Vic., c. 66 [1873], "Supreme Court of Judicature Act."
- 38 & 39 Vic., c. 77 [1875], amending and extending same, and containing the Rules of Court and Forms.
- 40 Vic., c. 9 [1877], amending Judicature Acts of 1873 and 1875.
- 39 & 40 Vic., c. 59 [1876], "The Appellate Jurisdiction Act, 1876."
- 42 & 43 Vic., c. 59 [1879], "Civil Procedure Acts Repeal Act, 1879."
- 42 & 43 Vic., c. 78 [1879], "The Supreme Court of Judicature Officers' Act, 1879."

*The Irish Judicature Acts are :*

- 40 & 41 Vic., c. 57 [1877], "Supreme Court of Judicature Act (Ireland), 1877."
- 41 & 42 Vic., c. 27, amending same.

*The principal Ontario Acts referred to are :*

- R. S. O., c. 38, "The Court of Appeal Act."
- R. S. O., c. 39, "The Superior Courts of Law Act."
- R. S. O., c. 40, "The Chancery Act."
- R. S. O., c. 49, "The Administration of Justice Act."
- R. S. O., c. 50, "The Common Law Procedure Act."

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "The Ontario Judicature Act Short title.  
5 1881."

2. This Act, except any provision thereof which is declared <sup>Commence-</sup> to take effect on the passing of this Act, shall commence and <sup>ment of Act.</sup> come into operation on the 22nd day of August, 1881. (See Imp. Act of 1873, s. 2.)

NOTE.—The references at the end of any clause or order mean as follows:—

"R. S. O." denotes Revised Statutes of Ontario.

"R. Sup. C., 1875," or "R. Sup. C." alone, denote the Rules of the Supreme Court contained in the Schedule to the Imperial Act of 1875, c. 77.

"R. Sup. C." with any other date than simply the year 1875, denotes the Rules of the Supreme Court subsequent to the Act of 1875, issued by the Judges of the Supreme Court under the authority of that Act.

"G. O. Chy." denotes the General Orders of the Court of Chancery for Ontario.

A star (\*) after the number of a section, subsection, or rule indicates that it was not in the draft distributed before the Session, or varies in some respect from the corresponding section, subsection or rule in such draft.

It is, of course, not intended that the foot-notes or the references at the end of each section should form part of the Act.

## PART I.

## CONSTITUTION OF SUPREME COURT.

Union of exist-  
ing Courts  
into one Su-  
preme Court.

3. From and after the time appointed for the commencement of this Act, the several Courts hereinafter mentioned (that is to say) the Court of Appeal, the Court of Queen's Bench, the Court of Chancery, and the Court of Common Pleas, shall be united and consolidated together, and shall constitute, under 5 and subject to the provisions of this Act, one Supreme Court of Judicature for Ontario. (*See Imp. Act of 1873, s. 3.*)

- (2) The Supreme Court shall consist of two permanent divisions. The said Courts of Queen's Bench, Chancery and Common Pleas shall constitute one of such divisions, 10 and shall be called "The High Court of Justice for Ontario." The said Court of Appeal shall constitute the other division, and shall be called "The Court of Appeal for Ontario." (*See Imp. Act of 1873, s. 4.*)
- (3) The Court of Queen's Bench shall thereafter be called 15 the Queen's Bench Division of the High Court; the Court of Chancery shall be called the Chancery Division thereof; and the Court of Common Pleas shall be called the Common Pleas Division thereof; the Judges of the said three Courts or Divisions shall 20 be called Justices of the High Court. (*See Imp. Act of 1873, s. 31; Imp. Act of 1877, s. 4.*)
- (4) The persons hereafter appointed to fill the places of the Chief Justice of the Queen's Bench, the Chancellor of Ontario, and the Chief Justice of the Common Pleas, 25 and their successors respectively, are to be appointed by the authority mentioned in the British North America Act, and with the same respective titles as heretofore. (*See Imp. Act of 1873, s. 5; B. N. A. Act, s. 96; R. S. O. c. 38, s. 4; c. 39, s. 8; c. 40, s. 5.*) 30
- (5) Save as in this Act is otherwise expressly provided, all the Judges hereinbefore mentioned, and their successors, shall have in all respects equal power, authority, and jurisdiction. (*See Imp. Act of 1873, s. 5.*) 35
- (6) The Chief Justice of the Queen's Bench shall be the President of the Queen's Bench Division, the Chancellor shall be the President of the Chancery Division, and the Chief Justice of the Common Pleas shall be the President of the Common Pleas Divi- 40 sion. (*See Imp. Act of 1873, s. 31.*)
- (7) The present Chancellor of Ontario, being at the time of the passing of this Act entitled to precedence over the present Chief Justices of the Queen's Bench and Common Pleas, shall be the first President of the 45 High Court; and on his ceasing to hold the office of Chancellor, the President of the said High Court shall be that one of the Presidents of the Queen's

Bench, Chancery and Common Pleas Divisions, who, for the time being, is first in order of seniority. (See Imp. Act of 1873, s. 5; Imp. Act of 1875, s. 6; R. S. O. c. 38, s. 6; 37 Vic. c. 7, s. 5.)

5 (8) Upon any vacancy happening among the Judges, the Judge appointed to fill such vacancy is (subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto) to become and be a member of the same Division to which the Judge whose place has become vacant belonged. (Imp. Act of 1873, s. 31.)

10 (9) Nothing in this Act shall prevent, or shall be construed as intended to prevent, the transfer of any Judge of any of the said Divisions from one to another of the said Divisions. (See Imp. Act of 1873, s. 31.)

4. The Court of Appeal for Ontario, at present existing, is continued, under that name, and shall, as heretofore, consist of a Chief Justice, to be called the Chief Justice of Ontario, 20 and three other Judges, to be called Justices of Appeal, as in the Act respecting the Court of Appeal, (R. S. O. cap. 38,) mentioned; and the said Judges of the Courts of Queen's Bench, Chancery and Common Pleas, and their successors the Justices of the High Court, shall be *ex officio* Judges of the 25 Court of Appeal, for the same purposes and with the same duties and powers as by the said Act is provided with respect to the Judges of the Courts of Queen's Bench, Chancery, and Common Pleas. (See Imp. Act of 1875, s. 4; (R. S. O., c. 38), ss. 3, 10.)

Existing Court of Appeal, continued.

30 5. The oath to be taken by the Judges to be hereafter appointed shall be the following:—"I do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as ; so help me God."

Oath of Office.

35 The oath is to be administered to the Chief Justices and the Chancellor by the Lieutenant-Governor in Council, and to the Justices of the High Court, other than the Chief Justices, in presence of the President of the High Court; and to the Justices of the Court of Appeal in open Court by the Chief 40 Justice of Ontario, unless the Lieutenant-Governor in any of such cases shall otherwise direct. (See R. S. O. c. 38, s. 7; c. 39, s. 9; c. 40, s. 7; Imp. Act 31 and 32 Vic. c. 72; Imp. Act of 1873, s. 9; Imp. Act of 1875, s. 5.)

45 6. Every existing Judge is, as to all matters within the legislative authority of this Province, to remain in the same condition as if this Act had not passed; and, subject to the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform if this Act had not passed. (See Imp. Act of 1873, s. 11.)

Saving of rights and obligations of existing Judges.

50 7. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice shall have been imposed or conferred by any statute or law upon the Judges or any 55 Judge of any of the Courts united and consolidated as aforesaid, (save as hereinafter mentioned) every Judge of the said High Court shall be capable of performing and exercising,

Provision for former extraordinary duties of Judges.

and shall be liable to perform and empowered to exercise every such duty, authority and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. (*See* 5 Imp. Act of 1873, s. 12.)

(2) Any such duty, authority, or power, imposed or conferred in any such case as aforesaid, upon the Chief Justice of Ontario, the Chancellor, the Chief Justice of the Queen's Bench, or the Chief Justice of the 10 Common Pleas, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed. (*See* Imp. Act of 1873, s. 12.)

Seal of Court. 8. The Lieutenant-Governor in Council may from time to 15 time, determine and declare the seal to be used in the Supreme Court and by which its proceedings shall be certified and authenticated; and until there is a seal for the Supreme Court, the seals now in use in and for the existing Courts may be used in and for the respective Divisions of the High Court, and in and 20 for the Court of Appeal respectively. (*See* Imp. Act of 1873, s. 61; R. Sup. C., April 1880, R. 45; R. S. O. c. 40. s. 3.)

## PART II.

### JURISDICTION

#### OF HIGH COURT.

Jurisdiction of High Court of Justice.

9. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, shall have the jurisdiction which, at the commencement of this Act, was 25 vested in, or capable of being exercised by, the Court of Queen's Bench, the Court of Chancery, the Court of Common Pleas, and Courts of Assize, Oyer and Terminer, and Gaol Delivery (whether created by Commission or otherwise), and shall be deemed to be and shall be a continuation of the 30 said Courts respectively (subject to the provisions of this Act) under the name of the High Court of Justice aforesaid. (*See* Imp. Act of 1873, s. 16; R. S. O. c. 41, s. 1 *et seq.*; 36 Vic. c. 8, ss. 52 and 55, Ont.)

(2) The jurisdiction aforesaid shall include (subject to the 35 exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, when 40 acting as Judges or a Judge in pursuance of any statute or law; and all powers given to any such Court, or to any such Judges or Judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the 45 jurisdiction. (*See* Imp. Act of 1873, s. 16.)

Transfer of pending business.

10. From and after the commencement of this Act the several jurisdictions vested in the said High Court of Justice, shall cease to be exercised except in the name of the said High Court of Justice as provided by this Act, save as otherwise in 50 this Act provided. (*See* Imp. Act of 1873, s. 22; section 80, *post*, &c.)

11. In all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected, at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act. (See Imp. Act of 1873, s. 22.)

Provision as  
to pending  
business.

(2) Every judgment, decree, rule, or order of any Court whose jurisdiction is hereby vested in the High Court of Justice, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged, by the High Court of Justice, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court; and all causes, matters, and proceedings whatsoever, which shall be pending in any of the Courts whose jurisdiction is so vested as aforesaid at the commencement of this Act, shall be continued and concluded in and before the High Court of Justice; and the said High Court shall have jurisdiction for so continuing and concluding matters criminal as well as civil. (See Imp. Act of 1873, s. 22; Order 60, *post*.)

(3) The said High Court shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the High Court of Justice, and continued therein down to the time at which this Act goes into effect; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, shall be continued and concluded, in and before the said High Court, as shall be directed by Rules or Orders of Court. (See Imp. Act of 1873, s. 22; Order 60, *post*.)

12. The jurisdiction of the High Court of Justice and the Court of Appeal, respectively, shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective existing Courts if this Act had not been passed. (See Imp. Act of 1873, s. 23.)

Rules as to  
exercise of  
jurisdiction.

#### JURISDICTION OF COURT OF APPEAL.

13.\*The Court of Appeal shall be a Superior Court of Record, and shall continue to have all the jurisdiction and power which the said Court has heretofore had, save as varied

Jurisdiction of  
Court of  
Appeal.

by or under this Act; and in civil cases shall also have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of the High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which appeals shall be allowed, as may be made pursuant to this Act; and there shall continue to be vested in such Court all jurisdiction and powers heretofore vested therein. (See Imp. Act of 1873, ss. 18, 19; R. S. O., c. 38, s. 18, *et seq.*)

Orders not subject to appeal.

14. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court, or Judge, making such order. (See Imp. Act of 1873, s. 49; R. S. O., c. 38, s. 18, sub-s. 3.)

Appeal from orders of single Judge.

15. Subject to the provisions of this Act, any rule, order or decision of a Judge in Court may be appealed against to the Court of Appeal without being first moved against in a Divisional Court. (See Imp. Act of 1873, ss. 18, 19, 50; *ante*, s. 13; s. 34, *post*; Order 54, *post*.)

On an appeal from the High Court, Court of Appeal to have all powers of High Court.

16. For all the purposes of and incidental to the hearing and determination of any such appeal, and the amendment, execution, and enforcement of any judgment or order made on such appeal, and for the purpose of every other authority given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice. (See Imp. Act of 1873, s. 19, second part; R. S. O., c. 38, s. 22.)

Jurisdiction subject to rules etc.

17. The jurisdiction and power of the Court of Appeal, in respect of the said matters and all others, shall be and are subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act. (See Imp. Act of 1873, s. 19, first part.)

#### RULES OF LAW.

Law and equity to be concurrently administered.

18. In every civil cause or matter commenced in the High Court of Justice, law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the Rules following (Imp. Act of 1873, s. 24; See R. S. O., c. 49, ss. 4, 5):

- (2) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or

petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act. (Imp. Act of 1873, s. 24, sub-s. 1.)

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- (3) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act. (*Ib.* sub-s. 2.)
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- (4) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant. (*Ib.* sub-s. 3.)
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- (5) The said Courts respectively, and every Judge thereof shall recognize and take notice of all equitable estates titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act. (*Ib.* sub-s. 4);

- (6) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction ; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto : 5

Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit ; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice ; and the Court shall thereupon make such order as shall be just. (*Ib.* sub-s. 5.) 25

- (7) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations, and liabilities existing by the Common Law or created by any Statute, in the same manner as the same would have been recognized and given effect to if this act had not passed by any of the Courts whose jurisdiction is vested in the High Court of Justice. (*See Ib.* sub-s. 6.) 35

- (8) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter ; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided (*Ib.* sub-s. 7.) 40 45 50

Rules of law upon certain points.

19. Whereas it is expedient to amend and declare the Law to be hereafter administered in Ontario as to the matters next hereinafter mentioned : Be it enacted as follows : (*See Imp. Act of 1873, s. 25 ; R. S. O. c. 40, ss. 86, 87 ; c. 49, ss. 4, 5, 21, 23 ; c. 50, ss. 131-133.*) 55

- (2) No claim of a *cestui que* trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations. (*Ib.* sub-s. 2; *See* R. S. O. c. 108, s. 30.) Statutes of Limitation not to apply to express trusts.
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- (3) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate. (Imp. Act of 1873, s. 25, sub-s. 3.) Equitable waste.
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- (4) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity. (*Ib.* sub-s. 4.) Merger.
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- (5) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or sue or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person. (*See Ib.* sub-s. 5.) Suits for possession of land by mortgagors.
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- (6) In case of an assignment of a debt or other chose in action, if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of law for the relief of trustees. (*See Ib.* sub-s. 6; R. S. O., c. 116, s. 6 *et seq.*) Assignment of debts and choses in action.
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- (7) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity. (Imp. Act of 1873, s. 25, sub-s. 7.) Stipulations not of the essence of contracts.
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- (8) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court, in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either uncon-
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ditionally, or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable. (*Ib.* sub-s. 8; *See* R. S. O., c. 40, s. 39; c. 52.)

- Infants (9) In questions relating to the custody and education of infants, the Rules of Equity shall prevail. (Imp. Act 15 of 1873, s. 25, sub-s. 10.)
- Cases of conflict not mentioned. (10) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail. (*Ib.* sub-s. 11.)

### PART III.

#### SITTINGS AND DISTRIBUTION OF BUSINESS.

##### HIGH COURT.

Abolition of terms. **20.** The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall not be terms applicable to any sitting or business of the High Court of Justice, or of any commissioners to whom any jurisdiction may be assigned under this Act, or of any commissioners of assize; but in all cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. (*See* Imp. Act of 1873, s. 26, first part; R. S. O., c. 41, s. 12; G. O. Chy., No. 413; ss. 24 and 80 *post*; Order 57, *post*.)

Sittings of Courts. **21.** Subject to Rules of Court, the High Court of Justice and the Court of Appeal, and the Judges thereof respectively, or any such commissioners as aforesaid shall have power to sit and act, at any time and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or commissioners, or for the discharge of any duty which by any Statute, or otherwise, is required to be discharged during or after term. (*See* Imp. Act of 1873, s. 26, second part; R. S. O. c. 41, s. 12; Order 57, *post*.)

Vacations. **22.** The Lieutenant-Governor in Council may from time to time, upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, make, revoke or modify, orders regulating the vacations to be observed by the High Court of Justice and the Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it con-

tinues in force, be of the same effect as if it were contained in this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. (*See Imp. Act of 1873, s. 27, first part; Order 57, post.*)

23. Provision shall be made by Rules of Court for the hearing, in Toronto, during vacation, by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard. (*See Imp. Act of 1873, s. 28; s. 80, post; Order 57, post.*)

Sittings in vacation.

24. Commissions of assize or any other commissions, either general or special, may be issued, by the proper authority, assigning to the persons to be therein named, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter, depending in the said High Court; or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so issued shall be of the same validity as if it were enacted in the body of this Act; and any commissioner or commissioners shall, when engaged in the exercise of any jurisdiction so assigned to him or them, be deemed to constitute a Court of the said High Court of Justice. (*See Imp. Act of 1873, s. 29.*)

Commissions of Assize and other Commissions.

25. All causes and matters in the High Court of Justice, shall be distributed among the several Divisions and Judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or orders of transfer, to be made under the authority of this Act. Every document by which any cause or matter shall be commenced in the said High Court shall be marked with the name of the Division to which the same is assigned. (*See Imp. Act of 1873, ss. 33 and 42.*)

Rules of Court to provide for distribution of business.

26. Subject to any Rules of Court and to the provisions of this Act and to the power of transfer, all causes and matters pending in the Court of Queen's Bench at the commencement of this Act are hereby assigned to the Queen's Bench Division of the High Court; all causes and matters pending in the Court of Chancery at the commencement of this Act are hereby assigned to the Chancery Division; and all causes and matters pending in the Court of Common Pleas at the commencement of this Act are assigned to the Common Pleas Division of the High Court. (*See Imp. Act of 1873, s. 34.*)

Assignment of pending business to the Divisions of the High Court.

27. Subject as aforesaid, every cause or matter afterwards commenced in the said High Court of Justice shall be assigned to one of the Divisions of the said High Court, by marking the document by which the same is commenced with the name of such Division.

Documents by which cause commenced to be marked with name of Division to which assigned.

(2) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the Division of the

said High Court to which such cause or matter is for the time being attached. (*See Imp. Act of 1875, s. 11, sub-s. 1.*)

Power of Transfer.

**28.** Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred from one Division or Judge of the High Court of Justice to any other Division or Judge thereof, by such authority and in such manner as Rules of Court may direct, or as transfers might be made from one Court to another before the passing of this Act. (*See Imp. Act of 1873, s. 36; R. S. O., c. 49, ss. 21—29; 41 Vic., c. 8, s. 4, Ont.*)

Rota of Judges for election petitions.

**29.** The Judges to be placed on the rota for the trial of election petitions for Ontario in each year, under the provisions of "The Controverted Elections Act of Ontario," shall be selected out of the Judges of the Supreme Court in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected, as hitherto, that is to say: the members of the Court of Appeal, and of the Queen's Bench, Chancery and Common Pleas Divisions aforesaid shall, on or before the third day of Michaelmas Term in every year, select, by a majority of votes of the members of such Court or Division, one of the Judges thereof: Provided that the Judges who at the commencement of this Act, shall be upon the rota for the trial of such petitions during the then current year, shall continue upon such rota until the end of such year, in the same manner as if this Act had not passed. (*See Imp. Act of 1873, s. 38; R. S. O., c. 11, s. 33.*)

Business to be disposed of by one Judge as far as practicable.

**30.** Every action and proceeding in the High Court of Justice, and all business arising out of the same, except as hereinafter provided, shall, so far as is practicable and convenient, be heard, determined, and disposed of, before a single Judge. (*See Imp. Act of 1876, s. 17, first part; R. S. O., c. 39, ss. 20-26; c. 50, ss. 281, 282.*)

(2) A Judge sitting elsewhere than in a Divisional Court, is to decide all questions coming properly before him, and is not to reserve any case, or any point in a case, for the consideration of a Divisional Court. (*See Imp. Act of 1873, s. 46; Imp. Act of 1875, s. 22; Imp. Act of 1876, s. 17; R. Sup. C., Order 57; R. Sup. C., Dec. 1876, R. 8.*)

(3) In all such cases any Judge sitting in Court shall be deemed to constitute a Court. (*See Imp. Act of 1873, s. 39, last part; R. S. O., c. 39, s. 21.*)

Divisional Courts of the High Court.

**31.** All business which may from time to time be so ordered by Rules of Court shall be transacted and disposed of by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court.

(2) Any number of such Divisional Courts may sit at the same time.

(3) A Divisional Court of the said High Court of Justice shall be constituted by two or three, and no more, of the Judges thereof; and, except when through pres-

sure of business or any other cause it may not conveniently be found practicable, shall be composed of three such Judges.

5 (4) Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts.

10 (5)\*But where the Divisional Court is constituted of two Judges only; such Court shall not hear or adjudicate upon any application against the judgment of either of such Judges.

15 (6) The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act or otherwise. (*See Imp. Act of 1873, s. 40; Imp. Act of 1876, s. 17.*)

20 **32.** Divisional Courts shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned. (*See Imp. Act of 1873, s. 41.*)

Constitution of  
Divisional  
Courts.

25 **33.** Subject to any Rules of Court, it shall be the duty of every Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be deemed necessary for the transaction of the business of any of the Divisions of the High Court;

Judges to take  
part in business  
of any  
Division.

30 (a) All such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorized by this Act, and also for the proper transaction of that part of the business of the said Divisions respectively which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court;

35 (b) And in case of difference among them, in such manner as a majority of the said Judges shall determine. (*See Imp. Act of 1873, s. 41.*)

40 **34.**\*Every rule, order, and decision made by a Judge of the said High Court, in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made or of the Court of Appeal. (*See Imp. Act of 1873, s. 50; R. S. O., c. 38, s. 16; c. 39, s. 22; c. 50, s. 281, sub-s. 2; s. 15 ante; Order 54 post.*)

Discharging  
orders made  
by a single  
Judge.

50 **35.**\*There shall be no appeal to a Divisional Court from any interlocutory order, whether made in Court or Chambers, in case before the passing of this Act there would have been

Appeals from  
interlocutory  
orders.

in relief from a like order by an application to a Superior Court, and there shall be no appeal to the Court of Appeal from any interlocutory order in case before the passing of this Act there would have been, or a relief from a like order by an appeal to the Court of Appeal. 5

Provision for absence or vacancy in office of a Judge.

36. Upon the request of the Judge or Judges with or for whom he is requested to sit or act, it shall be lawful for any Judge of the Court of Appeal, who may consent so to do, to sit and act as a Judge of the said High Court, or to perform any other official or ministerial acts for or on behalf of any Judge absent from illness or any other cause, or in the place of any Judge whose office has become vacant, or as an additional Judge of any Division; and while so sitting and acting any such Judge of the Court of Appeal shall have all the power and authority of a Judge of the said High Court. (See Imp. Act 15 of 1873, s. 51; R. S. O., c. 38, s. 9.) 10

#### BUSINESS IN COURT OF APPEAL.

Power of a single Judge in Court of Appeal.

37. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof. (See Imp. Act of 1873, 25 s. 52.) 20

No. of Judges required for a Sitting of the Court.

38. No sitting of the Court of Appeal shall be held unless four of its members are present, where the appeal is from a Divisional Court; or unless two of its members are present where the appeal is from a County Court, or Judge of a Surrogate Court, or a Stipendiary Magistrate, or where the subject-matter of the appeal is an interlocutory order, decree, or judgment of a single Judge which has not been moved against in a Divisional Court. Any doubt which may arise as to what decrees, orders, or judgments, are interlocutory, shall be determined by the Court of Appeal. (See Imp. Act of 1875, s. 12.) 30 35

- (2) In case from pressure of business, or other cause, it shall at any time seem expedient to the Lieutenant-Governor in Council, or to the Judges of the Supreme Court, or a majority of them, (of which majority two Judges of the Court of Appeal, including the Chief Justice unless absent on leave, shall form part), the Court of Appeal may sit in two Divisions at the same time; and in such case, and to enable two Divisional Courts to be held, the Judges of the said Supreme Court, or the said majority of them, shall select from the Judges of the High Court so many of the Judges thereof as may be necessary, together with the ordinary Judges of the Court of Appeal, to form two Divisions of the said Court, and the Judges so chosen and acting shall have all the power and authority of the Judges of the said Court of Appeal. 45 50

- (3) Unless otherwise arranged by the Judges of the Court of Appeal and the said Judges so selected, two of the ordinary Judges of the Court of Appeal shall where practicable sit in each such Divisional Court.  
5 (See Imp. Act. of 1875, s. 12.)

39.\* No appeal shall lie from the judgment or order of any Divisional Court or Judge of the High Court to the Court of Appeal, where the matter in controversy on the appeal does not exceed the sum or value of \$500, exclusive of costs, unless the matter  
10 in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights; or unless in case of a judgment of a Divisional Court the Judges were not unanimous, in which last mentioned case any party may appeal as  
15 hitherto. (See R. S. O., c. 38, s. 49; C. S. U. C., c. 38, s. 49; Imp. Act of 1873, s. 45.)

(2) No person who has appealed to a Divisional Court of the High Court, under section 34, shall be entitled to appeal from the decision of such Divisional Court thereon to the Court of Appeal where the matter in controversy on the appeal does not exceed the sum or value of \$1,000, exclusive of costs, unless the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights, or unless there has been a difference of opinion among the Judges of the Divisional Court. (*Ib.*)  
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(3) No appeal shall lie to the Supreme Court of Canada where the matter in controversy on the appeal does not exceed the sum or value of \$2,000, exclusive of costs, unless the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights, or unless there has been a difference of opinion between the Courts of this Province, or among the Judges thereof, before whom the cause or matter has been brought, with respect to the proper judgment. (*Ib.*; See R. S. O., c. 38, s. 49; 33 Vic., c. 11, ss. 17, 49 [D]; 42 Vic., c. 39, s. 8, [D]).  
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(4) No appeal shall be allowed unless notice thereof is given in writing to the opposite party and to the Clerk of the Crown and Pleas, or Registrar of the proper Court, within one month after the judgment complained of, or within such further time as the Court appealed from, or a Judge thereof, may allow; nor unless within 3 months after the judgment complained of or within such further time as the Court or Judge aforesaid may allow, the appellant gives proper security to the extent of \$400 to the satisfaction of the Court appealed from, that he will effectually prosecute his appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is affirmed. (See R. S. O., c. 38, s. 26.)  
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55 40. Save as aforesaid, appeals from the judgments of the High Court or a Judge thereof in civil cases, shall be within Appeals from High Court.

the same time and in the same manner and with the same effect as heretofore from like judgments of the Superior Courts or of a Judge thereof. (See R. S. O., c. 38, ss. 45-48.)

## PART IV.

### TRIAL AND PROCEDURE.

**Judgment not to be given for party unless entitled on the facts proved.** 41. At the trial of any action no party shall be entitled to judgment on the ground of his pleading being true, if the facts proved are not sufficient in point of law to entitle him to judgment. (See R. S. O., c. 49, s. 5; R. Sup. C., Dec. 1876, R. 3; Imp. Act of 1876, s. 17.) 5

**Modes of trial.** 42. Subject to Rules of Court, in causes and matters which, at the time of the passing of this Act, are within the jurisdiction of the Courts of Law, the mode of trial shall be as is now provided by law for like cases in actions in the said Courts of Queen's Bench and Common Pleas; and, subject as aforesaid, in causes and matters over which the Court of Chancery has, at the time of the passing of this Act, exclusive jurisdiction, the mode of trial shall be according to the present practice of the Court of Chancery. (See R. S. O., c. 49, ss. 4, 31; c. 50, ss. 252-258.) 10 15

**Sittings for trial of non-jury cases.** 43. As often in every year as the due despatch of business and the public convenience may require, there shall be sittings at every county town, for the trial of causes and issues, whether legal or equitable, which are to be heard and determined by a Judge without a jury, and in case such sittings are appointed at any county town for the same time and before the same Judge as jury cases, separate lists shall be made of the jury and non-jury cases, and the jury cases shall first be disposed of, unless where the Judge shall see fit, for some special reason, to direct otherwise. This section is subject to section 255 of the Common Law Procedure Act. (See R. S. O., c. 40, ss. 23-27; c. 41, ss. 1-12; c. 49, s. 3; c. 50, s. 249.) 20 25 30

**References and assessors.** 44. (Subject to any Rules of Court and to such right as may exist to have particular cases submitted to the verdict of a jury) any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred, by the Court or by any Divisional Court or Judge before whom such cause or matter may be pending, for inquiry and report to a Judge of a County Court, or to an official referee, or to any other person agreed on by the parties; and the report of such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. (See Imp. Act of 1873, s. 56; R. S. O., c. 50, ss. 189, 195, 197; Longman v. East, 3 C. P. D. 142.) 35 40

(2) The High Court, or any Divisional Court or Judge as aforesaid, or the Court of Appeal, may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such referees or assessors shall be determined by the Court. (See Imp. Act of 1873, s. 56, second part; G. O. Chy., No. 541.) 45 50

45. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court, (1) in which all parties interested who are under no disability consent thereto, and also (2) without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a Judge conveniently be made before a jury, or conducted by the Court through its other ordinary officers,—the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact, or any question of account arising in the cause or matter, to be tried either before a Judge of a County Court, or before an official referee, or (if the parties so agree) before a special referee. (*See Imp. Act of 1873, s. 57, first part.*)

Power to direct trials before referees.

(2) All such trials before referees shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct. (*Imp. Act of 1873, s. 57, second part.*)

46. In all cases of a reference to or trial by reference under this Act, the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of the reference as shall be prescribed by Rules of Court, or (subject to such Rules) by the Court or Judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury. (*Imp. Act of 1873, s. 58.*)

Power of referees and effect of their findings.

47. With respect to all such proceedings before referees and their reports, the Court or Judge shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby vested in the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards and appeals therefrom respectively, by the Common Law Procedure Act or other Acts. (*See Imp. Act of 1873, s. 59; R. S. O., c. 50, ss. 189-227.*)

Powers of Court with respect to proceedings before referees.

48. In the office of every Deputy Registrar and Deputy Clerk of the Crown such seal shall be used as the Lieutenant-Governor shall from time to time direct, which seal shall be impressed on every writ and other document issued out of or filed in such office; and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such Deputy Registrar or Deputy Clerk of the Crown, shall in all parts of this Province be received in evidence without further proof thereof. (*See Imp. Act of 1873, s. 61; R. S. O., c. 40, s. 3; c. 47, s. 6.*)

Seals of Deputy Registrars and Deputy Clerks of the Crown.

49. Save as by this Act or by any Rules of Court may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by this Act vested in the said High Court under or by virtue of any law, general order, or rule whatsoever, and which are not inconsistent with this Act or with any Rules of Court—may continue to be used and practised, in the said High Court of Justice, in such and the like cases, and for such and the like purposes, as those to which

Provision for saving of existing procedure where not inconsistent with this Act or Rules of Court.

they would have been applicable in the respective Courts of which the jurisdiction is so vested, if this Act had not passed. (See Imp. Act of 1873, s. 73 ; Imp. Act of 1875, s. 21.)

#### RULES OF COURT.

**Rules of Court.** **50.** The Rules of Court in the Schedule to this Act shall come into operation at the commencement of this Act, 5 and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice. But such Rules of Court and also all such other Rules of Court (if any) as may be made after the passing and before the commencement of this Act, under the authority of the next 10 section, may be annulled or altered by the authority by which new Rules of Court may be made after the commencement of this Act. (See Imp. Act of 1875, s. 16.)

**Who may make Rules.**

**51.** At any time after the passing and before the commencement of this Act, the Chief Justice of Ontario, the Justices 15 of Appeal, the Chief Justice of the Queen's Bench, the Chancellor, and the Chief Justice of the Common Pleas, or any five of them, and the other Judges of the several Courts intended to be united and consolidated by this Act, or a majority of 20 such other Judges, may make any further or additional Rules of Court for carrying this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the Rules in the Schedule to this Act ; that is to say :—

- (a) For regulating the sittings of the High Court of 25 Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers ;
  - (b) For regulating the pleading, practice, and pro- 30 cedure in the High Court of Justice and Court of Appeal ; and,
  - (c) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, 35 or of the said Supreme Court, or to the costs of proceedings therein ; and every other matter deemed expedient for the better attaining the ends of justice, advancing the remedies of suitors, and carrying into effect the provisions of this 40 Act and of all other Acts now or hereafter in force respecting the said Courts (See Imp. Act of 1875, s. 17 ; R. S. O., c. 49, s. 45, sub-s. 7) ;
- (2)\* Where the fees payable by stamps are not the same upon like proceedings in the Courts consolidated by this Act, 45 the said Judges shall have power, subject to the approval of the Lieutenant-Governor in Council, to make rules from time to time tending to equalize, as nearly as may be, the said fees.
- (3) From and after the commencement of this Act, the said 50 Supreme Court may at any time, with the concurrence of a majority of the Judges thereof present at any meeting for that purpose held, alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of 55

Court as is by this section vested in the existing Judges before the commencement of this Act;

- 5 (4) All Rules of Court made in pursuance of this section, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section (*See* Imp. Act of 1875, s. 17);
- 10 (5) Subject to any Rules of Court which may be made under the preceding provisions of this section the Judges of the Court of Appeal shall continue after the commencement of this Act to have all the powers which they now possess as to making Rules of Court for the regulation of the practice in appeals; and the Judges of the High Court shall as regards matters in the said High Court have in like manner all the powers which the Judges of the Court of Chancery and of the Superior Courts of Law have respectively for the regulation of the practice of the said Courts (*See* R. S. O., c. 38, s. 56; c. 49, s. 45);
- 15 (6) Where any provisions in respect of the practice or procedure of any Courts, the jurisdiction of which is vested by this Act in the High Court of Justice, are contained in any Statute, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice, unless, in the case of any Act hereafter passed, this power shall be expressly excluded with respect to such Act or any provision thereof. (*See* Imp. Act of 1875, s. 24.)
- 20 (7) Any provisions relating to the payment, transfer, or deposit into, or in, or out of any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure. (*See* Imp. Act of 1875, s. 24.)
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40 **52.** The Lieutenant-Governor in Council may from time to time authorize the following persons, viz.: the Chief Justice of Ontario, the Chief Justice of the Queen's Bench, the Chancellor, and the Chief Justice of the Common Pleas, to make Rules of Court under this Act; every such appointment to continue for such time as shall be specified by Order in Council, and the  
45 Judges so appointed, or any three of them, may make such Rules, and the same shall have the same effect as if made by all the Judges of the Supreme Court, under the preceding section. (*See* Imp. Act of 1876, s. 17, latter part.)

50 **53.** A Council of the Judges of the said Supreme Court of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lieutenant-Governor, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and  
55 the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of pro-

Governor in Council may authorize certain Judges to make Rules.

Council of Judges to consider procedure and administration of Justice.

cedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or any other Court or by any other authority; and they shall report annually to the Lieutenant-Governor what (if any) amendments or alterations it would in their judgment be expedient to make in this 5 Act, or otherwise relating to the administration of justice, and what other provision (if any) which cannot be carried into effect without legislative authority it would be expedient to make for the better administration of justice. An Extraordinary Council of the said Judges may also at any time be convened by the Lieutenant-Governor. (See Imp. Act of 1873, s. 75.) 10

Statutes relating to existing Courts to be read as applying to Courts under this Act.

54. All statutes relating to the several Courts consolidated by this Act, and the Judges thereof, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done 15 after the commencement of this Act, as if the said High Court of Justice, and the Judges thereof, as the case may be, had been named therein instead of such Courts, so consolidated as aforesaid, or the Judges thereof; and in all cases not hereby expressly provided for in which, under any such Statute, the concurrence 20 or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts so consolidated is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and 25 with the concurrence, advice, or consent of the same or a like number of Judges of the said High Court of Justice; and any general or other commission, by virtue whereof any Judges of any of the Courts so consolidated may, at the commencement of this Act, be empowered to try, hear, or determine any causes 30 or matters civil or criminal, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered. (See Imp. Act of 1873, s. 76.)

## PART V.

### OFFICERS AND OFFICES,

Officers of existing Courts to be attached to their respective divisions of the Supreme Court.

55.\* Subject to orders of the Lieutenant-Governor in Council, all officers, save as hereinafter mentioned, who at the time of the 35 commencement of this Act shall be attached to the Court of Chancery shall be attached to the Chancery Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High 40 Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court. (Comp. R. Sup. C., Order 60, R. 1.)

- (2)\* The above provision shall not apply to the Master in 45 Ordinary or local masters of the Court of Chancery, but these officers shall be officers of the Supreme Court and attached thereto.
- (3) The officers so attached shall hold their offices by the same tenure, and upon the same conditions as to 50 security and otherwise, as if this Act had not passed. (See Imp. Act of 1879, s. 23.)
- (4) Where a doubt exists as to the position under this Act of any existing officer attached to any Court or Judge

affected by this Act, such doubt may be determined by Rules of Court. The Lieutenant-Governor in Council shall have the power, and (subject to any Order in Council) the Judges of the said Supreme Court shall have power, to change the official names of offices and officers, and to change and regulate the duties of the officers. (See Imp. Act of 1879, s. 24.)

- (5) Any officer who is removable by the Court to which he is now attached shall be removable by the Court to which he shall be attached under this Act, or by the majority of the Judges thereof. (See Imp. Act of 1873, s. 77; R. S. O., c. 40, s. 11.)

56. Subject to any Order in Council in that behalf, the business to be performed in the High Court of Justice and in the Court of Appeal respectively, or in any Divisional or other Court thereof, or in the chambers of any Judge thereof, other than that performed by the Judges, shall be distributed among the several officers attached to the said Courts by section 54 in such manner as may be directed by Rules of Court; and such officers shall perform such duties in relation to such business as may be directed by Rules of Court; and, subject to such Order in Council and Rules of Court, all such officers respectively shall continue to perform the same duties, as nearly as may be, and in the same manner as if this Act had not passed. (See Imp. Act of 1873, s. 77, fourth paragraph.)

Distribution of business among officers.

57. All bonds, and securities heretofore given by Government officers and their sureties or by other persons, shall be held to be and continue binding, notwithstanding the changes effected by this Act, except in the case of any surety who, at least one calendar month before this Act goes into effect, gives notice in writing to the Provincial Secretary of his wish to be relieved of his liability. (See 32 Vic., c. 29, s. 17; 40 Vic. c. 6, s. 9 (D).)

Existing securities continued.

58. Every officer of the Court hereafter appointed before he enters upon his duties shall take and subscribe the following oath: "I, A. B. of—, do hereby solemnly swear that I will, according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfil the duties of the office of (as the case may be) without favour or affection, prejudice or partiality, to any person or persons whomsoever: So help me God." (See R. S. O. c. 40, s. 12).

Oath of officers.

- (2) When not convenient to a person appointed to any office to attend at Toronto to take the oath of office, the oath may be taken before the Judge of the County Court of the County in which such officer resides, or before any Commissioner authorized to administer affidavits in such County, and the oath shall be certified by such Judge or Commissioner and filed amongst the records of the Court at Toronto. In all other cases the oath shall be administered to the officer by the Judges or one or more of them in open court. (See R. S. O., c. 40, ss. 13, 14.)

59.\* Subject to any Rules of Court, the Master in Chancery, Authority of

certain officers  
preserved.

Authority of the Clerks of the Crown and Pleas, the Referee in Chambers, the Accountant, the Inspector of Titles, the Referee of Titles, the Local Masters of the Court of Chancery, and any other officers of the Superior Courts of Law and Equity, shall respectively have (under the said names or any names which by or under this Act are or shall be given to them or any of them) the same judicial and other powers in respect of business in each and every of the Divisions of the said High Court as they have now in respect of the business of the Court to which they are attached; and the orders and decisions of the said officers shall be subject to appeal as heretofore. (See R. S. O., c. 39, ss. 29-32; c. 40, ss. 8, 9, 10, 28, 29; c. 50, s. 189 *et seq.*; c. 110, s. 23; Reg.-Gen. of Feb'y, 1870, 29 Q. B. U. C., 623; G. O. Chy., Nos. 14, 15, 34-38, 197, 211-254, 495, 531-534, 560-589, 625, 626, 633, 634, 636, 638 *et seq.*)

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Official  
referees.

**60.** Subject as aforesaid, the Judges of the County Courts and the officers specially named in the last preceding section, shall be official referees for the trial of such questions as shall be directed to be tried by such referees. (See Imp. Act of 1873, ss. 57, 83; R. Sup. C., June 1876, R. 14-16; R. S. O., c. 50, s. 20 189.)

- (2) In case the business is found to require other or additional official referees, and the Presidents of the said Divisions so certify, the Lieutenant-Governor from time to time may appoint other and additional official referees accordingly. (See Imp. Act of 1873, s. 83.) 25
- (3) In the case of officers of the said High Court who are paid by salary, the fees on any reference or trial shall be paid in stamps; other referees shall be paid by fees. 30

Local Masters,  
Deputy  
Registrars,  
and Deputy  
Clerks of the  
Crown.

**61.** There shall be a Local Master in every County or Union of Counties other than the County of York.

- (2) \*Where there is no Local Master at the commencement of this Act, or when a vacancy occurs in the office of Local Master, the Judge of the County Court for the County shall be the Local Master until and unless another person is appointed Local Master. Where there are two County Judges—a Senior and Junior Judge—both Judges shall be Local Masters until and unless one of them or some other person is appointed sole Local Master. 35
- (3) Where a County Court Judge is the Local Master, the County Court Clerk shall be the Deputy Registrar.
- (4) The offices of Deputy Clerk of the Crown and Deputy Registrar (not Local Master) shall be consolidated as vacancies occur in either; unless where the Presidents of the Divisions of the High Court or a majority recommend otherwise. 45
- (5) Where a reference is made to a Deputy Clerk of the Crown, or an examination is taken by him, he shall be entitled to take and receive to his own use the fees on such reference or examination. *The Lieutenant-Governor in Council may commute such fees for a fixed sum, such sum not to exceed the average income derived from such fees during the preceding two years.* (See R. S. O., c. 50, s. 189 *et seq.*; ante s. 43 *et seq.*) 50 55

(5) \*The Lieutenant-Governor in Council may commute the fees of a Local Master, or of a Local Master and Deputy Registrar, including his fees as an official referee, for a fixed salary, such salary not to exceed the average income derived from fees for the preceding two years.

(6) The salary or sum so fixed as provided in the preceding two sub-sections shall continue until varied by Order in Council, but any order for payment of a salary or sum as aforesaid may be rescinded, and the amount of such salary or sum may by Order in Council be increased or diminished, provided that in no case shall any Order in Council name a salary or sum exceeding the average income aforesaid during the preceding two years.

62. Where a Local Master, or Deputy Registrar, or Deputy Clerk of the Crown, or other officer, is paid by a salary, he shall not, save as hereinbefore expressly provided, take for his own benefit, directly or indirectly, any fee or emolument, save the salary to which he may be entitled; but the like sums and fees heretofore payable on proceedings in his office shall continue to be payable; and all such fees shall form part of the Consolidated Revenue Fund of this Province, and shall be payable in stamps, subject to the provisions of the Act respecting Law Stamps. (See R. S. O., c. 40, s. 16.)

No fees to be taken by salaried officers.

(2) No Local Master whose gross income from his office of Local Master or of Deputy Registrar and Local Master, is \$2,000 or upwards shall, during the continuance of his appointment, directly or indirectly, practise in the profession of the law as Counsel, Attorney, or Solicitor, or as a Notary Public, or Conveyancer, or do any manner of conveyancing, or prepare any papers or documents to be used in any Court of this Province, under the penalty of forfeiture of office, and the further penalty of \$400, to be recovered by any person who sues for the same by action in the High Court, and one-half of such pecuniary penalty shall belong to the party suing, and the other half to Her Majesty for the use of the Province; but nothing in this section shall prevent the Lieutenant-Governor in Council, or the High Court, from requiring a Local Master whose income does not amount to \$2,000, to abstain from practising under the like penalties. (See R. S. O., c. 42, s. 5.)

(3) \*Every officer of the Supreme Court of Ontario paid by fees shall yearly, and on or before the 15th day of January in every year, transmit to the Treasurer of the Province a just, true and faithful account, to be verified upon oath, of the amount of fees paid or payable to him in respect of his office during the preceding year. (See R. S. O., c. 16, s. 37; 43 Vic. c. 3.)

(4) The Lieutenant-Governor or the member of the Government having charge of the matter may require the return to state any particulars, or to be made in any form, that may be thought proper, and such return shall be made accordingly.

Official Guardian  
*ad litem.*

63. \*There shall an be official Guardian *ad litem* of infants ; and the solicitor heretefore usually appointed by the Court of Chancery as guardian *ad litem* of infants shall be the first Official Guardian, and shall hold office during pleasure as if appointed by the Lieutenant-Governor. 5

- (a) In case of a vacancy the appointment shall be by the Lieutenant-Governor, as in the case of the other officers of the Courts ; and the persen appointed shall be a Barrister-at-Law and Solicitor of this Province, of not less than seven years standing, and shall hold 10 office during pleasure.
- (b) The official Guardian, besides acting as guardian *ad litem* of infants under Rules of Court and other orders, shall perform such other duties as a Divisional Court or Judge may from time to time direct. 15
- (2) All costs paid to the Guardian by any party shall be by such guardian paid forthwith into Court with the privity of the Accountant of the High Court, and shall be placed to the credit of a fund to be intituled "Account of Official Guardian *ad litem*;" and all 20 costs payable to the Guardian out of any funds in Court shall be transferred to the credit of the same account.
- (3) Where the estate is small, and, in view of the amount at the credit of the said account, the amount or part 25 of the amount payable out of the estate for the Guardian's costs does not appear to be required to pay the salary and disbursements of the official Guardian, the Court may withhold payment out of such estate of the sum or any part of the sum due 30 for the Guardian's costs in respect of such estate ; and may distribute the estate as if such costs were not payable by or out of the same.
- (4) There shall be paid to the said Guardian a fixed salary of such sum per annum as, in view of the amount of 35 business done or to be done by the Guardian, and the sum at the credit of the said account, the said Judges shall think reasonable, and the Lieutenant-Governor in Council approve ; which salary shall be over and above all necessary disbursements ; and the salary 40 and disbursements shall be paid monthly or otherwise as shall be determined by rule of Court, out of the fund at the credit of the said account of official Guardian *ad litem*, and not otherwise.
- (5) Where the official Guardian has occasion to employ a 45 Solicitor in another County for the purpose of any proceeding in a suit, such Solicitor shall be entitled to receive from the official Guardian in respect of such proceeeding the same costs as if the Solicitor so employed were Solicitor and Guardian of the Infant. 50
- (6) The Lieutenant-Governor in Council, or the High Court, may order that the official Guardian is not to practise as a Barrister or Solicitor, and in such case he shall

not, during the continuance of his appointment and of such order, directly or indirectly practise the profession of the law as Counsel or Solicitor, or as a Notary Public, or Conveyancer, or do any manner of conveyancing, or prepare any papers or documents to be used in any Court of this Province, except in the discharge of his duties as official guardian, or of any other duties which may be assigned to him by the said High Court or any Division or Judge thereof as the case may be; and the said official Guardian in case of his offending in the matter aforesaid shall be subject to a penalty of forfeiture of office, and the further penalty of \$400 to be recovered by any person who sues for the same by action in the High Court; and one half of such pecuniary penalty shall belong to the party suing, and the other half to Her Majesty for the use of the Province. (See R. S. O., c. 42, s. 5.)

64.\* The Accountant shall yearly and on or before the 15th day of January in every year transmit to the Lieutenant-Governor in Council a just, true and faithful statement, shewing the state of the "Account of official Guardian *ad litem*" upon the 31st day of the preceding December. (See R. S. O., c. 50, s. 121.)

65. In all cases in which any interest in real or personal estate, effects or property is vested in the Accountant for the time being of the High Court, as such Accountant and in respect of his office, all such real and personal estate, effects and property whatsoever, upon the death, resignation, or removal from office of each and every Accountant of the said Court from time to time, and as often as the case happens, and the appointment of a successor takes place, shall, subject to the same trusts as the same were respectively subject to, vest in the succeeding Accountant by force of this Act. (See R. S. O., c. 40, s. 32.)

Provisions as  
to Property  
vested in Act  
countant.

(2) In case of there being at any time no Accountant of the High Court, all mortgages, stocks, funds, annuities and securities whatsoever theretofore standing in the name of any Accountant, or in his custody or power in respect of his office, together with all the interest and estate of the said Accountant in the lands and premises embraced in such mortgages or other securities, shall become and be, by force of this Act, vested in such other officer as the High Court, by general order, may, from time to time, direct, subject to the same trusts as they may then respectively be subject to. (See R. S. O., c. 40, s. 31.)

(3) All mortgages, stocks, funds, annuities and securities whatsoever, at the time of the commencement of this Act, standing in the name of the Accountant of the Court of Chancery, or of the Referee in Chambers, or any other officer named by the Court for the purpose under the authority of the 31st section of the Chancery Act, or in his custody or power as such Accountant, Referee in Chambers or other officer aforesaid, together with all the interest and estate of the said

Accountant, Referee in Chambers or other officer, in the lands and premises embraced in such mortgages or other securities, shall become and be vested in the Accountant of the High Court for the time being, as such Accountant, or in such other officer as the Court by general order may from time to time direct, subject to the same trusts as they may then respectively be subject to. (See R. S. O., c. 40, s. 31.) 5

Expenses of Accountant's Office.

**66.** The expenses of the Accountant's Office including all salaries shall, from the 1st day of April, 1881, be the first 10 charge on the income arising from the funds in Court.

Inspector of Sheriffs and other offices.

**67.** \*The Lieutenant-Governor may from time to time appoint one of the officers of the High Court, or some other competent person, to be Inspector of the Offices of the Sheriffs, Local Masters, Deputy Registrars, Deputy Clerks of the Crown, 15 Local Registrars of the High Court, and Clerks of the County Court, in the respective Counties of the Province.

The duty of the Inspector for the time being shall be:—

- (1) To make a personal inspection of the said offices and of the books and Court papers belonging thereto 20 respectively;
- (2) To see that proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a proper manner, at proper times, and in a proper form and order, and 25 that the Court papers and documents are properly classified and preserved;
- (3) To ascertain that the duties of the officers are duly and efficiently performed;
- (4) To see that proper costs and charges only are allowed 30 or exacted;
- (5) To ascertain that proper security has been given by any officer required by law to give security;
- (6) To ascertain whether uniformity of practice prevails in the several offices of the High Court and in the 35 County Courts;
- (7) To report upon all such matters, as expeditiously as may be, to the Lieutenant-Governor. (See 43 Vic. c. 8, s. 23.)

Inquiries by Inspector.

**68.** When the said Inspector has occasion to institute 40 an inquiry into the conduct of any officer in relation to his or their official duties or acts, it shall be lawful for the said Inspector to require such officer, or any other person or persons, to give evidence on oath; and for this purpose the said Inspector shall have the same power, to summon such officers to 45 attend as witnesses, to enforce their attendance and to compel them to produce books and documents, and to give evidence, as any Court has in civil cases. (See 43, Vic. c. 8, s. 24.)

69. The said several officers shall, as often as required by the said Inspector, produce for examination and inspection all books and documents which are required to be kept by them, or which may hereafter be required to be kept by them; and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector shall require. (See 43 Vic. c. 8, s. 26.)

Books, etc., to be produced for inspection.

70. Every person who at the commencement of this Act shall be authorized to take recognizances of bail, or to administer oaths and take affidavits and affirmations, in any of the Courts whose jurisdiction is hereby vested in the High Court of Justice, shall be a commissioner for the said purposes in all causes and matters whatsoever which may from time to time be depending in the said High Court. (See Imp. Act of 1873, s. 82; R. S. O., c. 63; c. 80.)

Powers of Commissioners to administer oaths.

#### SOLICITORS.

71. From and after the commencement of this Act all persons heretofore admitted as solicitors or attorneys of, or by law empowered to practise in, any Court the jurisdiction of which is hereby vested in the High Court of Justice, shall be called Solicitors of the Supreme Court of Ontario, and shall be entitled to the same privileges, and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed.

Solicitors and attorneys.

(2) All persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors or attorneys of, or been by law empowered to practise in, any such Courts, shall be entitled to be admitted on payment of the fees now required for admission to the Courts of Queen's Bench, Common Pleas and Chancery, and shall be so admitted by any Divisional Court, and shall be called Solicitors of the Supreme of Ontario, and shall, as far as circumstances permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

(3) Any solicitors or attorneys to whom this section applies shall be deemed to be officers of the said Supreme Court; and that Court, and the High Court of Justice and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of the Superior Courts or a Judge thereof might, previously to the passing of this Act, have exercised in respect of any solicitor or attorney admitted to practise therein. (See Imp. Act of 1873, s. 87.)

#### PART VI.

##### COUNTY COURTS AND JUDGES.

72.\* Section one of chapter 22 of the Acts of the Legislature of this Province, passed in the 32nd year of her Majesty's reign is repealed, and section two of chapter 15, of the Consolidated Statutes of Upper Canada shall not be affected by the said Act or by any other enactment of the Legislature

32 Vic., c. 22, s. 1, repealed.

of this Province heretofore passed and purporting to repeal the same.

**Local Judges.** 73. The Judges of the several County Courts shall be Judges of the High Court for the purposes of their jurisdiction in actions in the High Court; and in the exercise of such jurisdiction may be styled "Local Judges of the High Court," and shall, in all causes and actions in the High Court, have, subject to Rules of Court, power and authority to do and perform all such acts, and transact all such business as the Judges of the County Courts have now in actions in the Courts of Queen's Bench and Common Pleas; and to do and perform such other acts and business in respect to matters and causes in and before the High Court as they may by Rules of Court in that behalf from time to time be empowered to do. (See R. S. O., c. 39, s. 29; c. 40, s. 28; c. 50, s. 148; R. Sup. C., Order 35, R. 4; R. Sup. C., April, 1880, R. 11; Order 49, *post*.)

**Powers of County Courts.** 74. Every County Court shall as regards all causes of action within its jurisdiction for the time being, have power to grant relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought be done in the like case by the High Court of Justice. (See Imp. Act of 1873, s. 89.)

**Counter-claims in County Courts, and transfers therefrom.** 75. Where in any proceeding before any such County Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim:

**Proviso.** Provided always, that in such case it shall be lawful for the High Court or any Division or Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such court to the High Court, or to any Division thereof; and in such case the Record in such proceeding shall be transmitted by the Clerk or other proper officer, of the County Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein. (See Imp. Act of 1873, s. 90.)

**Practice of High Court to apply to County Courts.** 76. The practice and procedure for the time being of the High Court of Justice, shall, in matters not expressly provided for, apply and extend to the County Courts and to all actions and proceedings therein. (See R. S. O., c. 43, s. 29.)

**R. S. O., c. 43, s. 14 amended.** 77.\* The sittings of the several County Courts of this Province, now required to be held on the first Monday in April and October in each year, for disposing of cases without the

intervention of a jury, shall after the passing of this Act commence on the first Tuesday instead of the first Monday in each of the said months. (R. S. O., c. 43, s. 14.)

78. \*The Lieutenant-Governor in Council may, with the Surrogate Court fees of County Judges. consent of any County Court Judge, commute the fees payable to him under the Surrogate Courts Act for a fixed sum; such sum not to exceed the average income derived from such fees during the preceding two years; and any sum so fixed shall continue until varied by Order in Council; but any order for  
10 payment of a sum as aforesaid may be varied or rescinded, and the amount increased or diminished; provided that in no case shall any Order in Council name a sum exceeding the average receipts for fees during the preceding two years.

15 (2) \*In case of such commutation the like sums and fees heretofore payable to such Judge shall continue to be payable, and shall form part of the Consolidated Revenue Fund of this Province, and shall be payable in stamps, subject to the provisions of the Act respecting Law Stamps. (See R. S. O., c. 40, s. 16.)

20 (3) \*Where there is no commutation and the fees aforesaid exceed the sum of \$1,000 in any year, the excess shall be received by the Registrar and paid over to the Treasurer of the Province for the uses of the Province.

25 (4) \*The preceding sub-section shall not apply so as to reduce the amount payable to the Judge in any year to a sum less than the aggregate amount of the fees payable to him for such year in respect of fees provided for by the Consolidated Statutes of Upper Canada, chapter 16, schedule "B," and exclusive of  
30 the additional fees assigned to Surrogate Judges by the Act passed in the fortieth year of Her Majesty's reign, chapter 7, schedule "A" (65).

35 (5) \*Out of the excess aforesaid a sum not exceeding \$666 may on the authority of an Order in Council be paid to the Junior Judge of the County (if any).

(6) \*This section, and the several sub-sections thereof, shall operate from the first day of January last.

79. The several rules of law enacted and declared by this Act shall be in force and receive effect in all courts whatsoever Rules of law to apply to Inferior Courts.  
40 in Ontario, so far as the matters to which such rules relate shall be respectively cognizable by such courts. (See Imp. Act of 1873 s. 91.)

## PART VII.

### MISCELLANEOUS PROVISIONS.

80. All books, documents, papers and chattels in the possession of any Court the jurisdiction of which is hereby vested Transfer of books and papers to Supreme Court.  
45 in the High Court of Justice, or of any officer or person

attached to any such Court, as such officer, or by reason of his being so attached, shall be dealt with by such officer or person in such manner as the High Court of Justice or the Supreme Court may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court. (See Imp. Act of 1873, s. 92.)

Compelling attendance of witnesses.

81. Upon proof to the satisfaction of the Judge presiding at the sittings of any Court of the service of a subpoena upon any witness, who fails to attend, or to remain in attendance in accordance with the requirements of the subpoena, and that a sufficient sum for his fees as a witness had been duly paid or tendered to him, and that the presence of such witness is material to the ends of justice, the said Judge may, by his warrant, cause such witness to be apprehended and forthwith brought before him or any other Judge who may thereafter preside at such sittings, to give evidence, and in order to secure his presence as a witness, such witness may be taken on such warrant before the presiding Judge and detained in the custody of the person to whom the warrant is directed, or otherwise, as the presiding Judge may order, until his presence, as such witness, shall be required, or, in the discretion of the said Judge, he may be released on a recognizance (with or without sureties), conditioned for his appearance to give evidence. (See 39 Vic., c. 36, Dom.; 32 and 33 Vic., c. 25 30, s. 26, Dom.)

Form of warrant.

82. Such warrant may be similar to form No. 189, in appendix F hereto, and may be directed to any sheriff or other officer of the court, or to any constable, and may be executed in any part of Ontario.

Saving as to circuits, etc.

83. This Act is not intended to affect, and shall not affect, the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commission for the discharge of civil or criminal business on circuit or otherwise; or the authority of a Judge or a retired Judge of any of the Superior Courts, or a Judge of a County Court, or one of Her Majesty's Counsel learned in the law, to preside without any commission at any Court of Assize, Oyer and Terminer, and General Gaol Delivery, or at a Court held under this Act in the exercise of the jurisdiction now belonging to Courts of Assize, Oyer and Terminer, and General Gaol Delivery, or the authority of such Counsel learned in the law to hold any sitting for the hearing of causes; and any such Judge or Counsel shall after the commencement of this Act, have the same authority to preside as aforesaid, or to hold any sitting of the High Court for the hearing of causes in the High Court respectively, which such Judge or Counsel now has to preside at Courts of Assize, Oyer and Terminer, and General Gaol Delivery, or to hold a sitting of the Court of Chancery for the hearing of causes; and any such Judge or Counsel when presiding as aforesaid with or without a commission, or when holding any sitting as aforesaid, shall be deemed to constitute a Court. (See Imp. Act of 1873, s. 93; C. S. U. C., c. 11, ss. 2-6; 29 and 30 Vic., c. 39; R. S. O., c. 39, ss. 27, 28; c. 40, ss. 23-27; c. 41, ss. 1-10.)

84. Nothing in this Act, or in the Schedule thereto, affects <sup>This act not to</sup> or is intended to affect, the practice or procedure in criminal <sup>apply to cer-</sup> matters, or matters connected with Dominion Controverted <sup>tain matters.</sup> Elections, or proceedings on the Crown or Revenue side of the Queen's Bench or Common Pleas Divisions. (*See Imp. Act of 1875, ss. 19, 21; R. Sup. C., Order 62; R. Sup. C., April, 1880, R. 54.*)

85. The provisions of the Prison and Asylum Inspection Act, chapter 224 of the Revised Statutes, as to the inspection, <sup>Inspection,</sup> 10 construction and repairing of Gaols, shall apply to Court <sup>etc., of Court</sup> Houses, and the said provisions shall so far as applicable be <sup>Houses.</sup> read as if the words Court House or Court Houses were inserted after the words Gaol or Gaols in the said Act.

#### REPEAL.

15 86. From and after the commencement of this Act there <sup>Repeal.</sup> shall be repealed, so far as relates to this Province:—

- 20 (1) Sections 15 and 16 of a certain Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the fifth and sixth years of the reign of His Majesty King William the Fourth, and chaptered 62; without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed. (*See Imp. Act 22 and 23 Vic., c. 12, s. 2.*)
- 25 (2) Any enactment inconsistent with this Act. (*See Imp. Act of 1875, s. 33.*)

#### INTERPRETATION.

87. In the construction of this Act and of the Rules, unless <sup>Interpretation</sup> there is anything in the subject or context repugnant thereto <sup>of terms.</sup> 30 theseveral words hereinafter mentioned shall have, or include the meanings following (that is to say):

- “Rules of Court” shall include forms.
- “Cause” shall include any action, suit, or other original, proceeding between a plaintiff and a defendant.
- 35 “Suit” shall include action.
- “Action” shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of Court; and shall not include a criminal proceeding by the Crown.
- 40 “Plaintiff” shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.
- 45 “Petitioner” shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.
- 50 “Defendant” shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings.

- “Party” shall include every person served with notice of, or attending any proceeding, although not named on the Record.
- “Matter” shall include every proceeding in the Court not in a cause. 5
- “Pleading” shall include any petition or summons, and also shall include the statement in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant. 10
- “Judgment” shall include decree.
- “Order” shall include rule.
- “Oath” shall include solemn affirmation and statutory declaration.
- “Existing” shall mean existing at the time appointed for the commencement of this Act. (*See Imp. Act of 1873, s. 100.*) 15
- “Proper Officer” shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows:— 20
- (a) Where any duty to be discharged under this Act or the Rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same, until otherwise provided by Rule; 25
- (b) Where any new duty is under this Act or the Rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same, in the case of an officer of the High Court of Justice, not attached to any Division, by the President of the High Court, and in the case of an officer attached to any Division, by the President of the Division. (*See Imp. Act of 1875 Order 63.*) 30 35
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## SCHEDULE.

## RULES OF COURT.†

[NOTE.—Where no other provision is made by the Act or these Rules the present procedure and practice remain in force. See sections 12 & 47 of this Bill, *ante*; Order 1, R. 4. *post*.]

## ORDER I.

## FORM AND COMMENCEMENT OF ACTION.

1. All actions which have hitherto been commenced by writ <sup>Action.</sup> in the Superior Courts of Common Law, and all suits which have hitherto been commenced by bill or information in the Court of Chancery, shall be instituted in the High Court of Justice by a proceeding to be called an action. (Comp. R. Sup. C., 1875, Order 1, R. 1.)

2. With respect to interpleader, the procedure and practice <sup>Interpleader.</sup> now used by Courts of Common Law under the Interpleader Act R. S. O., chapter 54, shall apply to all actions and to all the Divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence. (Comp. *Ib.*, R. 2.)

3. The orders of the Court of Chancery numbered from 467 <sup>Certain Chy. orders to apply to all Divisions.</sup> to 487, and those numbered from 638 to 650, shall apply to all the Divisions of the High Court of Justice.

4. \*All other proceedings in and applications to the High Court may, subject to these Rules, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if the Act had not been passed. In case a defendant is let in to defend under the 11th section of the Revised Statute respecting absconding debtors, the action shall proceed as in ordinary cases under the Act, subject to the provisions in other respects of the said Revised Statute. (Comp. *Ib.*, R. 3, R. S. O. c. 68.) <sup>Other proceed-ings.</sup>

## ORDER II.

## WRIT OF SUMMONS AND PROCEDURE, &amp;c.

1. Every action in the High Court shall be commenced by a <sup>Writ.</sup> writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and specifying the Division of the High Court to which the action is assigned. (Comp. R. Sup. C., Order 2, R. 1; R. Sup. C., Schedule A.; R. S.O., c. 50, ss. 3, 29 *et seq.*; c. 67, s. 8 *et seq.*; c. 137.)

† (NOTE.—In addition to the Rules contained in the Schedule to the English Judicature Act, 1875, the following additional or amending Rules have been issued, viz.:—Rules of Supreme Court August, 1875; December, 1875; February, 1876; June, 1876; December, 1876; May, 1877; June, 1877; November, 1878; December, 1879; April, 1880; May, 1880. All, so far as they were considered useful and applicable here, are, with more or less variation, embodied in the present Schedule, which contains other rules also.)

**6**  
Costs of im-  
proper form.

2. Any costs occasioned by the use of any more prolix or other forms of writs and of indorsements thereon, than the forms hereinafter prescribed, shall be borne by the party using the same unless the Court shall otherwise direct. (R. Sup. C., Order 2, R. 2.)

**7**  
Form of Writ

3. \*The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Form No. 1 in Appendix (A). hereto, with such variations as circumstances may require, where the service is to be made in Ontario. (*Ib.*, R. 3.)

**8**  
Writ and notice for service out of jurisdiction.

4. \*Where there is jurisdiction in any of the Superior Courts to proceed with a suit on a service out of Ontario, the writ of summons to be so served shall be in Form No. 2, in Appendix (A) hereto, with such variations as circumstances may require. Where a defendant is not a British subject, and is not in British Dominions, notice of the writ of summons is to be served in lieu of service of the writ, and such notice shall be in Form No. 3 in the same Part, with such variations as circumstances may require. (Comp. *Ib.*, R. 5, schd., forms 2, 3; R. S. O., c. 50, ss. 48-53; G. O. Chy., Nos. 90-102; Eng. C. L. P. Act of 1852, s. 19.)

**9**  
Date and teste of Writ.

5. \*Every writ of summons and every other writ shall bear date on the day on which the same is issued, and shall be tested in the name of the President of the High Court of Justice, and shall require the defendant to appear thereto in 8 days after service, if the service is to be made in Ontario. (Comp. R. Sup. C., Order 2, R. 8.)

**10**  
Amendment of Writ.

6. The Court or a Judge may, at any stage of the proceedings, allow the plaintiff to amend the writ of summons, in such manner and on such terms, as may seem just. (*See* R. Sup. C., Feb'y, 1876, R. 6.)

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### ORDER III.

#### INDORSEMENTS OF CLAIM, &C.

**11**  
Precise statement not essential.

Amendment.

1. In the indorsement required by Order 2, Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the Court or Judge amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief. (*Ib.*, R. 2.)

**12**  
Form of indorsement.

2. The indorsement of claim may be to the effect of such of the forms in Part II. of Appendix (A) hereto as shall be applicable to the case, or if none be found applicable then of such other similarly concise form as the nature of the case may require. (*Ib.*, R. 3.)

3. If the plaintiff sues in a representative capacity, or if the defendant or any of the defendants is sued in a representative capacity, the indorsement shall shew, in manner appearing by the statement in Appendix (A) hereto, Part II., sec. V., or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued. (Comp. *Ib.*, R. 4.)

13

Where action is in representative capacity.

4. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest,—arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust,—the writ of summons may be specially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off. (*Ib.*, R. 6; Comp. R. S/O., c. 50, s. 19.)

14

Special indorsement.

5. Where the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs, respectively, and shall further state that upon payment thereof within 8 days after service, or, in case of a writ not for service within the jurisdiction, within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix (A) hereto, Part II., sec. II. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation. (Comp. R. Sup. C., Order 3, R. 7; R. S. O., c. 50, s. 18.)

15

Indorsement in cases of debt or liquidated demand.

6. In all cases of ordinary account, as, for instance, in the case of a partnership, or executorship, or ordinary trust account, where the plaintiff desires to have an account taken in the first instance, the writ of summons shall be indorsed with a claim that such account be taken. This rule does not apply to proceedings under Order I., Rule 3. (*See* R. Sup. C., Order 3, R. 8; G. O. Chy., Nos. 467 *et seq.*; 638 *et seq.*)

16

Indorsement of claim for account.

7. Where the claim is for the foreclosure of a mortgage or the sale of mortgaged property, and the plaintiff desires an order against a defendant for the immediate delivery of possession, or for immediate payment, the writ must, in addition to the ordinary notice, be indorsed with a further notice to the effect of such of the forms in Appendix (A) hereto, Part II., section VI., as are applicable to the case. (*See* G. O. Chy., No. 647.)

17

Indorsement in mortgage suits where immediate possession or payment desired.

8. Where a plaintiff sues by a solicitor, the writ of summons or notice in lieu of service of a writ of summons, shall be indorsed with the solicitor's name or firm and place of business, where writs, notices, petitions, orders, warrants and other documents, proceedings, and written communications may be left for him.

18

Address of plaintiff and of solicitor.

(a) Where any such solicitor is only agent of another solicitor, there shall be added to his name or firm and place

of business the name or firm and place of business of the principal solicitor. (Comp. R. Sup. C., Order 4, R. 1; R. S. O., c. 50, s. 16; G. O. Chy., Nos. 40, 41.)

19  
Address of  
plaintiff in  
person.

9. Where a plaintiff sues in person, there shall be indorsed upon the writ of summons, or notice in lieu of service of a writ of summons, his place of residence and occupation.

(a) If his place of residence shall be more than 2 miles from the office out of which the first process in the cause shall be issued, there shall be indorsed also another proper place, to be called his address for service, which shall not be more than 2 miles from such office, where writs, notices, petitions, orders, warrants and other documents, proceedings, and written communications not requiring personal service may be left for him.

(b) If the writ or notice is not so indorsed, or if such address or place be more than 2 miles from the office aforesaid, then the opposite party shall be at liberty to proceed by posting up all notices, petitions, orders, warrants and other documents, proceedings and written communications in such office. (Comp. R. Sup. C., Order 4, R. 2; R. S. O. c. 50, s. 17; Rules of T. T., 1836, No. 138, Ont.; G. O. Chy., No. 44.)

20  
Plaintiff's  
option as to  
place of issue.

10. In any action whatever the plaintiff wherever resident may issue a writ of summons out of the proper office in Toronto, or in any County. (See R. Sup. C., Order 5, R. 1; R. S. O., c. 50, s. 10; G. O. Chy., No. 77.)

21  
Officers to  
issue Writs.

11. Until otherwise ordered, writs of summons for the commencement of actions in the Queen's Bench and Common Pleas Divisions, shall be issued by the same officers as now issue like writs for the Courts of Queen's Bench and Common Pleas respectively, and shall be issued alternately in the Queen's Bench and Common Pleas Divisions, as the case may be, as heretofore in the said Courts. Writs for the commencement of actions in the Chancery Division shall be issued by the proper officers hitherto attached to the Court of Chancery. Writs issued by the Clerk of Records and Writs, or by a Deputy Registrar or Deputy Clerk of the Crown and Pleas need not be sealed or signed by the Clerk of the Process. (See R. S. O., c. 39, s. 44; c. 50, s. 3. *et seq.*; G. O. Chy., Nos. 34-39; R. Sup. C. Order, 5, R. 4.)

22  
Statement as  
to appearance.

12. In all cases there shall be a statement on the face of the writ of summons naming the office in which the defendants' appearance is to be entered. (Comp. R. Sup. C., Order 5, R. 2, 3; R. S. O., c. 50, Sch. A, Form 1; G. O. Chy., No. 86, Sch. C.)

23  
Preparation of  
writ.

13. Writs of summons may be written or printed, or partly written and partly printed. (Comp. R. Sup. C., Order 5, R. 5.)

24  
Sealing and  
issue of writ.

14.\* Every writ of summons shall be signed and sealed by the officer issuing the same, and shall thereupon be deemed to be issued. (*Ib.*, R. 6.)

25  
Filing and  
entry.

15.\* The officer issuing such writ shall make an entry thereof in a book to be called the Process Book, which is to be kept in the manner in which process books have heretofore been kept by the Clerks of the Crown and Pleas; and the action shall be distinguished by a number in the manner in which actions are now distinguished in such last mentioned books; and in case of any further proceeding in the action, an entry thereof shall be made in another book to be called the Pro-

cedure Book, which is to be kept in the manner in which Procedure Books have heretofore been kept by the said Clerks. (Comp. *Ib.* R. 8.)

16. \*The plaintiff in any action may, at the time of, or at any time during 12 months after, the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked by the officer issuing the same with the word "concurrent," in the margin, and the date of issuing the concurrent writ: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force. (Comp. R. Sup. C., Order 6, R. 1; R. S. O., c. 50, s. 26.)

17. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction. (R. Sup. C., Order 6, R. 2.)

#### ORDER IV.

##### DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose name shall be signed to or indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity.

(a) If he answers in the affirmative, then he shall also, in case the Court or a Judge so directs, disclose in writing, within a time to be limited by such Court or Judge, the profession or occupation, and place of abode of the plaintiff, on pain of being guilty of a contempt of the Court from which such writ appears to have issued.

(b) If such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge. (Comp. R. Sup. C., Order 7, R. 1; R. S. O., c. 50, s. 56; Eng. C. L. P. Act of 1852, s. 7.)

2. Where a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitor, shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm.

(a) If the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct.

(b) Where the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the writ; but all proceedings shall, nevertheless, continue in the name of the firm. (R. Sup. C., Order 7, R. 2.)

## ORDER V.

## RENEWAL OF WRIT.

30  
Currency of writ.

1. \*No original writ of summons shall be served after 12 months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the 12 months, apply to a Judge for leave to serve the writ after, and notwithstanding the lapse of, the said period;

(a) \*The Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the service shall be good if made within 12 months from the date of the order; and so from time to time during the currency of the further period allowed.

(b) The writ shall in such case be renewed by being marked with the date of the day, month and year of such renewal; such renewal to be so marked by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 75, in Appendix E.

(c) In such case the original writ shall be available, to prevent the operation of any statute whereby the time for the commencement of the action is limited and for all other purposes, from the date of the original issue of the writ. (Comp. R. Sup. C., Order 8, R. 1; R. S. O., c. 50, ss. 27-29; G. O. Chy., Nos. 93-98.)

31  
Evidence of renewal.

2. The production of a writ of summons purporting to have been renewed in manner aforesaid shall be sufficient *prima facie* evidence for all purposes, of the writ having been so renewed, and of the commencement of the action as of the date of the issue of the writ in manner provided as aforesaid. (Comp. R. Sup. C., Order 8, R. 2; R. S. O., c. 50, s. 28; Eng. C. L. P. Act of 1852, s. 13.)

## ORDER VI.

## SERVICE OF WRIT OF SUMMONS.

1.—*Mode of Service.*

32  
Undertaking to accept service.

1.\* No service of writ shall be required where the defendant by his solicitor accepts service, and undertakes to enter an appearance. (R. Sup. C., Order 9, R. 1; G. O. Chy., No. 47.)

33  
Personal and substituted service.

2.\* Where service is required the writ shall, wherever it is practicable, be served by the same person and in the same manner as personal service is now made; but if it be made to appear to the Court or Judge on affidavit that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just. (R. Sup. C., Order 9, R. 2; *Ib.*, Order 10; R. S. O., c. 16, ss. 32, 33; c. 40, s. 95; c. 50, ss. 20, 23; Eng. C. L. P. Act of 1852, s. 17; G. O. Chy. Nos. 99-102; Eng. Cons. Orders, No. 10 R. 6, 7.)

## 2.—On particular Defendants.

3. A married woman shall be served as a party to a suit or matter not under any disability, is now served; and the like proceedings may be had on such service and with the like effect, as if the married woman were a *feme sole*. (See G. O. Chy., No. 613; R. S. O., c. 125, s. 20.)

34  
Married  
Woman.

4. \*Where the action is for the administration or partition of an estate in which an infant is interested or where the action is for any purpose other than the recovery of money from an infant defendant personally, or of lands, goods or chattels, of which he is personally in possession, service on the official guardian shall be good service on the infant defendant if such infant defendant is resident in Ontario, at the time of such service.

35  
Service on  
official guar-  
dian.

(a) If in such case there is more than one infant defendant, for whom service is to be made on the official guardian, one copy only need be so served.

(b) From the time of such service the official guardian shall become and be the guardian *ad litem* of the infant, unless and until the Court otherwise orders; and it shall be his duty forthwith to attend actively to the interests of the infant in the action, and for that purpose to communicate with all proper parties, including the father or guardian (if any) of the infant, and also the person with whom or under whose care the infant resides, in case such person is not the infant's father or guardian; and the guardian is to make such other inquiries and to take such other proceedings as the interests of the infant may require.

(c) Any person interested may move before a judge in Chambers, on such material as he may think proper, for an order appointing a guardian other than the official guardian so served; whereupon such order as may be considered most conducive to the interests of the infant shall be made, and a copy of the order shall forthwith be served on the official guardian. (R. Sup. C., Order 9, R. 4; G. O. Chy., Nos. 517-520, 610-612, 616,

5. \*Where an action is brought against an infant defendant, for the recovery of money from him personally or for the recovery of lands, goods, or chattels of which he is personally, in possession, service shall be made on the infant personally; and one copy of the writ shall also be posted (prepaid) to or delivered at the office of the official guardian. (R. Sup. C., Order 9, R. 4; G. O. Chy., Nos. 517-520).

36  
Service on  
infant  
personally.

6. Where a lunatic or person of unsound mind not so found by inquisition, or judicial declaration, is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on such defendant. (Comp. R. Sup. C., Order 9, R. 5; R. S. O., c. 40, s. 70; c. 220, ss. 49-51; G. O. Chy., Nos. 517-520.)

37  
Lunatic.

7. No further proceedings are to be taken against such a defendant who has no committee, until a guardian *ad litem* is appointed. (See G. O. Chy., No. 518.)

38  
Guardian *ad*  
*litem*.

## 3.—On Partners and other Bodies.

8. Where partners are sued in the name of their firm, the writ shall be served either upon any one or more of the part-

39  
Partners.

ners, or, at the principal place within Ontario of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there; and, subject to the rules hereinafter contained, such service shall be deemed good service upon the firm. (R. Sup. C., Order 9, R. 6.)

40  
Person doing  
business under  
name of firm.

\*9. Where one person carrying on business in the name of a firm apparently consisting of more than one person, shall be sued in the firm name, the writ may be served at the principal place within Ontario of the business so carried on, upon any person having at the time of service the control or management of the business there; and subject to any Rules of Court, such service shall be deemed good service on the person so sued. (R. Sup. C., June, 1876, R. 4.)

41  
Corporations.

10. Where, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided. (R. Sup. C., Order 9, R. 7; R. S. O., c. 50, ss. 21, 22; c. 149, s. 43; c. 150, s. 60.)

#### 4.—*In particular Actions.*

42  
Action to  
recover land.

11. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property. (R. Sup. C., Order 9, R. 8; comp. R. S. O., c. 51, s. 8.)

#### 5.—*Generally.*

43  
Indorsement  
of service.

12. The person serving a writ of summons shall, within 3 days at most after such service, indorse on the writ the day of the month and week of the service thereof; otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made. (R. Sup. C., Order 9, R. 13; comp. R. S. O., c. 50, s. 23, Eng. C. L. P., Act of 1852, s. 15).

### ORDER VII.

#### SERVICE OUT OF ONTARIO.

(Comp. R. S. O., c. 50, s. 48; R. Sup. C., Order 2, R. 4; *Ib.*, Order 11; R. Sup. C., June, 1876, R. 5; G. O. Chy., Nos. 90, 100, 102, 620.)

44  
Service out of  
Ontario:  
in what cases.

1.\* Service out of Ontario of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge in the following cases:—

(a) Where the whole or any part of the subject-matter of the action is land, stock, or other property, situate within Ontario, or is any act, deed, will, or thing affecting such land, stock or property;

(b) Where the contract, which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within Ontario;

(c) Where there has been a breach within Ontario of any contract wherever made ;

(d) Where any action or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done, or is situate, within Ontario ;

(e) Where the action is upon a contract or judgment though the same be not within any of the four classes already enumerated, but it appears to the satisfaction of the Court or a Judge that the defendant has assets in Ontario of the value of \$200 at least which may be rendered liable to the judgment in case the plaintiff should recover judgment in the action ; and if the defendant does not appear, the Court or a Judge is to give any directions which the Court or Judge from time to time sees fit as to the manner of proceeding in the action, and the conditions on which the same may be proceeded with ; and shall require the plaintiff before obtaining judgment to prove his claim and the amount of debt or damages (if any) to the satisfaction of the Court or Judge, and in such mode as the Court or Judge, having reference to the nature of the case, may direct. (See R. Sup. C., Order 11, R. 1 ; R. S. O., c. 50, ss. 50, 51.)

43  
Procedure  
in case of  
neglect to ap-  
pear.

2.\* Where a defendant is served out of Ontario he shall have the time following for entering his appearance and delivering his defence.

46  
Time for  
defending.

(a)\* If the defendant is served within any part of the Dominion of Canada (other than Ontario, Manitoba, Keewatin or the North West Territories, or British Columbia,) or within any State of the United States of America, he is to have 4 weeks after such service.

(b)\* If served within any part of the United Kingdom (including the Isle of Man and the Channel Islands), or of Manitoba, Keewatin or the North West Territories, British Columbia, or Newfoundland, he is to have 8 weeks after such service.

(c) If served elsewhere than within the limits above designated, he is to have 12 weeks after such service.

(d)\* The writ of summons in such case may be in the form set forth in Appendix (A), and the statement of claim is to be served therewith.

(See G. O. Chy., No. 620.)

3. The preceding rule shall not interfere with the jurisdiction heretofore existing in any of the courts hereby consolidated, to direct in certain cases, on application in that behalf, that service in any other manner may be good service, or that the time for appearing shall be other than the time above named, or to give any special or other direction as respects proceeding against a defendant out of Ontario. (See R. S. O., c. 50, ss. 48-51 ; G. O. Chy., Nos. 102, 621.)

47  
Saving of  
existing  
jurisdiction.

4. It shall not be necessary before serving the writ, or notice of the writ, to apply to the Court or Judge to allow the service ; but in case proof is given to the satisfaction of the Court or Judge that the service was duly made and that the case was a proper one for service out of the Province under the preceding rules, the service shall be allowed. (R. S. O., c. 50, ss. 49, 51.)

48  
Service made  
without pre-  
vious order  
may be  
allowed.

5. Notice in lieu of service shall be given in the manner in which writs of summons are served. (See R. S. O., c. 50, s. 50.)

49  
Service of no-  
tice in lieu of  
writ.

## ORDER VIII.

## APPEARANCE, &amp;C.

- 50**  
Appearance,  
where entered. 1.\* All proceedings to final judgment in actions shall be carried on in the office from which the writ of summons was issued, except where by any Rule of Court it may be otherwise provided, or where a Court or Judge shall otherwise direct. (*See Imp. Act of 1873, s. 64; R. Sup. C., Order 12, R. 1-5; R. Sup. C., June, 1876, R. 12; G. O. Chy., No. 35; R. S. O., 50, c. ss. 12, 303.*)
- 51**  
How entered. 2. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing, dated on the day of delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. (*Comp. R. Sup. C., Order 12, R. 5; R. S. O., c. 50, ss. 61-62; R. Sup. C., Feb'y. 1876, R. 5; R. Sup. C., April, 1880, R. 6.*)
- 53**  
Address of  
Solicitor. 3. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business. (*Comp. R. Sup. C., Order 12, R. 7.*)
- 53**  
Address of  
defendant in  
person. 4. A defendant appearing in person shall state in such memorandum his address; and if he resides more than 2 miles from the office from which the writ of summons was issued, he shall state in such memorandum a place to be called his address for service, which shall not be more than 2 miles from such office. (*Comp. Ib., R. 8; R. S. O., c. 50, s. 61.*)
- 54**  
Where no ad-  
dress or im-  
proper address  
given. 5. If the memorandum does not contain such address it shall not be received; and if such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff; and the plaintiff may, by the Court or a Judge, be permitted to proceed by posting up the proceedings in the office from whence the writ was issued. (*Comp. R. Sup. C., Order 12, R. 9; R. S. O., c. 50, s. 61.*)
- 55**  
Form of  
memorandum. 6. The Memorandum of Appearance may be in the Form No. 76, Appendix (E), with such variations as the circumstances of the case may require. (*Comp. R. Sup. C., Order 12, R. 10; R. S. O., c. 50, s. 62.*)
- (a) In case a defendant does not require the plaintiff to deliver a statement of claim he shall so state in his memorandum of appearance, and in that case shall serve a copy of such appearance on the plaintiff. (*See R. Sup. C., April, 1880, R. 6.*)
- 56**  
Entry of  
memorandum. 7. Upon receipt of a Memorandum of Appearance, the officer shall forthwith enter the appearance in the Procedure Book. (*R. Sup. C., Order 12, R. 11; See Rules of T. T., 1856, No. 1, Ont.*)
- 57**  
Partners. 8. Where partners are sued in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. (*R. Sup. C., Order 12, R. 12.*)
- 58**  
Appearance  
by person sued  
under firm  
name. 9. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. (*R. Sup. C., June, 1876, R. 6.*)
- 59**  
Two or more  
defendants,  
etc. 10. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum. (*R. Sup. C., Order 12, R. 13; Rules of T. T., 1856, No. 2, Ont.*)

11. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment. (R. Sup. C. Order 12, R. 14; Rules of T. T., 1856, No. 3, Ont.; Rules of Hilary Term, 1853, No. 3, Eng.)

12. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the Court or a Judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ; and if the defendant appears after the time appointed by the writ, and omits to give such notice of his appearance, the plaintiff may proceed as in case of non-appearance. (R. Sup. C., Order 12, R. 15; R. S. O., c. 50, s. 60.)

13. Any person not named as a defendant in a writ of summons for the recovery of land, may, by leave of the Court or Judge, appear and defend, on filing an affidavit shewing that he is in possession of the land, either by himself or his tenant. (R. Sup. C., Order 12, R. 18; R. S. O., c. 51, s. 10; Eng., C. L. P. Act of 1852, s. 172.)

14. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord. (R. Sup. C., Order 12, R. 19; Comp. R. S. O., c. 51, s. 12.)

15. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or Judge to appear and defend, he shall enter an appearance according to the foregoing rules, intituled in the action against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action; and if such person appears and omits to give notice of his appearance, the plaintiff may proceed as in case of non-appearance. (Comp. R. Sup. C., Order 12, R. 20; Rules of T. T. 1856, No. 93, Ont.)

16. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance; or in a notice intituled in the cause and signed by him or his solicitor, such notice to be served within 4 days after appearance upon the attorney whose name is indorsed on the writ, if any; and if none, then filed in the proper office; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole. (R. Sup. C., Order 12, R. 21; Comp. R. S. O., c. 51, s. 13.)

17. The notice to be served as mentioned in the last preceding Rule may be in the Form No. 14 in of Appendix (B) hereto, with such variations as circumstances may require. (Comp. R. Sup. C., Order 12, R. 22.)

18.\* Any person appearing to a writ of summons in other cases may limit his defence to the question of the amount to which the plaintiff is entitled, and in that case may in his appearance or by notice served within 4 days thereafter, state that he disputes only the amount claimed by the plaintiff and

60

Solicitor's undertaking.

61

When appearance may be entered and when notice is to be given.

62

Appearance by landlord in action for land.

63

Form of appearance by landlord.

64

Notice of appearance by landlord.

65

Limited appearance in action for land

66

Notice.

67

Form of notice.

68

Limitation of defence as to amount claimed only.

he need not file any further defence for the purpose of disputing such amount; and the plaintiff is to proceed as if the defendant had filed a defence disputing the amount of the claim. The notice disputing the amount of the claim may be in the form given in Form No. 15, in Appendix (B) hereto, with such variations as circumstances may require.

## ORDER IX.

### DEFAULT OF APPEARANCE.

**69**  
By person of  
unsound mind.

1. Where no appearance has been entered to a writ of summons for a defendant who is a person of unsound mind not so found by inquisition, or judicial declaration in lieu of an inquisition, the plaintiff may apply to the Court or a Judge for an order that the official guardian or some other proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of the application was, after the expiration of the time allowed for appearance, and at least 6 clear days before the day in the notice named for hearing the application, served upon, or left at the dwelling-house of, the person with whom or under whose care such defendant was at the time of serving such writ of summons. (Comp. R. Sup. C., Order 13, R. 1; G. O. Chy., Nos. 519, 520; R. S. O., c. 40, s. 65.)

**70**  
By Infants.

2. \*In case of an infant defendant, who has been served with a writ of summons, otherwise than by the same being served on the official guardian, if no guardian *ad litem* is appointed within 7 days after the time for appearance had expired, the plaintiff may serve the official guardian with notice of the said particulars; whereupon from the time of such service the official guardian shall become and be the guardian *ad litem* of the infant, unless and until the Court otherwise orders; and it shall be his duty forthwith to attend actively to the interests of the infant in the action, and for that purpose to communicate with all proper parties, including the father or guardian (if any) of the infant, and also the person with whom or under whose care the infant resides, in case such person is not the infant's father or guardian; and the guardian is to make such other inquiries and take such other proceedings as the interests of the infant may require. (G. O. Chy., Nos. 610, 611.)

**71**  
Proceedings  
in default of  
appearance.

3. Where any defendant fails to appear to a writ of summons and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order 11, Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be. (R. Sup. C., Order 13, R. 2.)

**72**  
Where writ  
specially in-  
dorsed.

4. In case of non-appearance by the defendant where the writ of summons is specially indorsed under Order 3, Rule 4, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, and the plaintiff may, at the expiration of 8 days from the last day for appearance, and not before, issue execution upon such judgment; but it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just. (*Ib.*, R. 3; R. S. O., c. 50, s. 64; Eng. C. L. P. Act of 1852, s. 27.)

5. Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money under Order 3, Rule 4, and one or more of the defendants appear to the writ, and others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment, without prejudice to his right to proceed with his action against such as have appeared. (Comp. R. Sup. C., Order 13, R. 4; R. S. O., c. 50, s. 69; Eng. C. L. P. Act of 1852 s. 33.)

73  
Where several  
defendants.

6. \*Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need afterwards be delivered, but the plaintiff may file an affidavit of service of the summons, or of notice in lieu of service, as the case may be, and file and serve a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of 8 days, enter final judgment for the amount shewn thereby, and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ, besides costs. (Comp. R. Sup. C., Order 13, R. 5; R. S. O., c. 50, s. 65; Eng. C. L. P. Act of 1852, s. 28.)

74  
Where writ  
not specially  
indorsed.

7. Where the defendant fails to appear to the writ of summons and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered, and the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons shall be assessed as hitherto, or at the County Court of the County in which the action is brought if the solicitors for all parties reside in such County; or the High Court or a Judge thereof, may order that the value and amount of damages, or either of them, shall be ascertained in any other way in which any question arising in an action may be tried. (Comp. R. Sup. C., Order 13, R. 6; R. S. O., c. 50, s. 65; Eng. C. L. P. Act of 1852, ss. 28, 94.)

75  
Where claim  
for detention  
of goods and  
pecuniary  
damages.

8. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply. (Comp. R. Sup. C., Order 13, R. 7; R. S. O., c. 51, s. 20; Eng. C. L. P. Act of 1852, s. 177.)

76  
Action for  
land.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned, for the land; and may proceed as in the other preceding Rules of this order, as to such other claim so indorsed. (R. Sup. C., Order 13, R. 8; R. S. O., c. 51, s. 70; Eng. C. L. P. Act of 1856, s. 257.)

77  
Assessment of  
damages in ac-  
tion for land.

10. \*Where the action is in respect of a mortgage, and the plaintiff claims foreclosure or sale or redemption, or where the action is for the administration of an estate, or for a partition, the plaintiff shall be entitled to a judgment or order on *procipe* to the Registrar, Deputy-Registrar, Local Registrar, or Clerk or Deputy-Clerk of the Crown and Pleas, as the case may be, on

78  
Judgment on  
*procipe* in  
certain  
cases.

such evidence (if any) and in such cases (as nearly as may be), as provided for by the present practice of the Court of Chancery in that behalf. (G. O. Chy. Nos. 38, 435-436, 645-648.)

79  
Judgment  
where plaintiff  
not entitled to  
judgment on  
precipe.

11. Where the action is for the foreclosure or redemption of a mortgage, or sale of mortgaged premises, if the plaintiff is not entitled to a judgment or order on *precipe*, or would not according to the practice of the Court of Chancery be entitled on *precipe* to such a judgment or order as he desires, he shall be entitled to the proper judgment or order on notice or otherwise, according to the practice of the Court of Chancery where a cause is heard on an order to take the bill *pro confesso* or otherwise. (See G. O. Chy., Nos. 113 *et seq.*, 432-434.)

## ORDER X.

### LEAVE TO SIGN JUDGMENT WHERE WRIT SPECIALLY INDORSED

80  
Leave to sign  
final judgment.

1. Where the defendant appears to a writ of summons specially indorsed, under Order 3, Rule 4, and the plaintiff is not entitled to a judgment or order, under the preceding Order, he may, on an affidavit made by himself, or by any other person who can swear positively to the debt or cause of action, verifying the cause of action, and stating that in his belief there is no defence to the action, serve the defendant with a notice of motion to shew cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs. A copy of the affidavit shall accompany the notice of motion. The Court or a Judge may thereupon, unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend the action, make an order empowering the plaintiff to sign judgment accordingly. (Comp. R. Sup. C., Order 14, R. 1; R. Sup. C. May, 1877, R. 3.)

81  
Procedure.

2. The application by the plaintiff for leave to enter judgment under the last preceding Rule shall be made on notice returnable not less than 2 clear days after service. (Comp. R. Sup. C., Order 14, R. 2.)

82  
Shewing  
cause.

3. The defendant may shew cause against such application by offering to bring into Court the sum indorsed on the writ, or by affidavit. In such affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part, of the plaintiff's claim. And the Judge may, if he think fit, order the defendant to attend and be examined upon oath; or to produce any books or documents or copies of or extracts therefrom. (*Ib.* R. 3.)

83  
Defence as to  
part.

4. In any case if it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted to be due, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of any amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim. (*Ib.* R. 4.)

5.\* If it appears to the Judge that any defendant has a good defence to the action, or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former. (*Ib.* R. 5.)

84

Where several defendants.

6. Leave to defend may be given unconditionally, or subject to such terms as to giving security, or otherwise, as the Court or a Judge may think fit. (*Ib.*, R. 6.)

85

Leave to defend may be absolute or conditional.

## ORDER XI.

### APPLICATION FOR ACCOUNT, &C., WHERE WRIT INDORSED UNDER ORDER III., RULE 6.

1. In default of appearance to a writ indorsed under Order 3, Rule 6, and after appearance in a case in which the preceding Orders do not entitle the plaintiff to a judgment or order on præcipe or otherwise, then unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made. (Comp. R. Sup. C., Order 15, R. 1; G. O. Chy. No. 467 *et seq.*; R. S. O., c. 50, ss. 189-197; Imp. Act 15 & 16 V. c. 86, ss. 45, 47; Order 9, R. 10 Ante.)

86

Action for account.

2. An application for such order as mentioned in the last preceding Rule shall be made on notice, and be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired. (R. Sup. C., *Ib.* R. 2.)

87

Application to be on notice.

3. But the preceding 2 rules are not to prevent orders for the administration of the estate real or personal of a deceased person, or for the partition or sale of an estate from being obtained on motion without any previous notice or other preliminary proceeding, and in the manner provided for by the General Orders of the Court of Chancery in that behalf. (*See* G. O. Chy. Nos. 467 *et seq.*; 638 *et seq.*)

88

Orders for administration, partition or sale.

## ORDER XII.

(*See* R. S. O., c. 50, ss. 73-83.)

### PARTIES.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And, without any amendment, judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the

89

Who may be joined as plaintiffs.

- action shall otherwise direct. (R. Sup. C., Order 16, R. 1; R. S. O., c. 49, s. 5.)
- 90**  
Substitution and addition of plaintiffs.
2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a Judge, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person or persons to be substituted or added as plaintiff or plaintiffs, upon such terms as may seem just. (R. Sup. C., Order 16, R. 2; Comp. R. S. O., c. 49, s. 5.)
- 91**  
Who may be joined as defendants.
3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And, without any amendment, judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities. (*See* R. Sup. C., Order 16, R. 3.)
- 92**  
Where defendant not interested in all the relief prayed.
4. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a Judge may make such order as may appear just, to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest. (*Ib.*, R. 4.)
- 93**  
All or any parties liable on one contract may be joined.
5. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes. (*Ib.*, R. 5; *See* G. O. Chy., No. 62.)
- 94**  
Several defendants in cases of doubt.
6. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action. (R. Sup. C., Order 16, R. 6.)
- 95**  
Trustees, executors and administrators.
7. Trustees, executors, and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to, or in lieu of, the previously existing parties thereto. (*Ib.*, R. 7; *See* G. O. Chy., Nos. 58, 61; Imp. Act 15 and 16 Vic., c. 86, s. 42.)
- 96**  
Infants.
- 8.\* Infants may sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of the Act; and may, in like manner, defend any action by their guardians appointed for that purpose or by the official guardian as the case may be.
- 97**  
Married women.
- 9.\* Married women may sue or defend without their husbands and without next friends, in all cases relating to their separate estate, or their separate engagements, contracts or torts; and also in suits for alimony; and in other cases by the leave of a Court or a Judge, on giving (in such other cases) such security (if any) for costs as the Court or a Judge may

require. (Comp. R. Sup. C., Order 16, R. 8; R. S. O., c. 125, "Married Woman's Property Act.")

(a)\* In cases not thus provided for, married women may sue as plaintiffs by their next friends in manner practised in the Court of Chancery before the passing of the Act.

10. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the Court to defend, in such action, on behalf of, or for the benefit of, all parties so interested. (R. Sup. C., Order 16, R. 9; G. O. Chy., Nos. 58-61.)

**98**  
Where parties  
are numerous.

11. In any case in which the right of an heir-at-law or of the next of kin, or of a class shall depend upon the construction which the Court may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the Court shall consider that in order to save expense or for some other reason it will be convenient to have the question or questions of construction determined before such heir-at-law, next of kin or class, shall have been ascertained by means of inquiry or otherwise, the Court may appoint some one or more person or persons to represent such heir-at-law, next of kin or class, and the judgment of the Court in the presence of such person or persons shall be binding upon the party or parties or class so represented. (R. Sup. C., June, 1876, R. 7.)

**99**  
Persons ap-  
pointed to re-  
presenta class.

12. Any two or more persons claiming, or being liable, as co-partners, may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a Judge for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct. (R. Sup. C., Order 16, R. 10.)

**100**  
Partners.

13. Any person carrying on business in the name of a firm, apparently consisting of more than one person, may be sued in the name of such firm. (R. Sup. C., June 1876, R. 8.)

**101**  
Person trading  
under firm  
name.

14. Subject to the Act and these Rules, the provisions as to parties, contained in Orders 58, 59, 60 and 61 of the General Orders of the Court of Chancery, shall be in force as to actions in the High Court of Justice. (Comp. R. Sup. C., Order 16, R. 11; Imp. Act, 15 and 16 V., c. 86, s. 42; G. O., Chy., No. 68.)

**102**  
Rules of Court  
of Chancery as  
to parties.

15. No action shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. (See R. Sup. C., Order 16, R. 13; G. O. Chy., No. 53.)

**103**  
Misjoinder.

(a) The Court or Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out, and that the name of any party, whether plaintiff or defendant, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added.

(b) No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto.

(c) All parties whose names are so added as defendants shall be served with a notice in manner hereinafter mentioned, or

in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice. (Comp. R. Sup. C., Order 16, R. 13; R. S. O., c. 50, s. 73, *et seq.*)

**101**  
How applica-  
tion is to be  
made.

16. Any application to add, or strike out, or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion, or at the trial of the action in a summary manner. (R. Sup. C., Order 16, R. 14.)

**105**  
Amended writ  
where new  
defendant  
added.

17.\* Where a defendant is added, unless otherwise ordered by the Court or Judge, the plaintiff shall sue out an amended writ of summons, and serve the new defendant with such writ, or notice in lieu of service thereof, in the same manner as original defendants are served. (*Ib.*, R. 15.)

**103**  
Amended  
statement of  
claim.

18. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the Court or Judge, be amended in such manner as the making such new defendant a party shall render desirable; and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice, or afterwards within 4 days after his appearance. (*Ib.*, R. 16.)

**107**  
Contribution  
or indemnity  
between de-  
fendants and  
other persons.

19. Where a defendant is, or claims to be, entitled to contribution or indemnity, or any other remedy or relief, over against any other person, or where from any other cause it appears to the Court or a Judge that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff, defendant and any other person, or between any or either of them, the Court or a Judge may on notice being given to such last-mentioned person, make such order as may be proper for having the question so determined. (*Ib.* R. 17; *See* s. 18, sub-s. 4, of Act *ante.*)

**108**  
Notice to per-  
sons not al-  
ready parties.

20. Where a defendant is entitled to contribution, indemnity, or other remedy or relief over against any person not a party to the action, he may serve a notice to that effect; a copy of such notice shall be filed with the proper officer, and served on such person, according to the rules relating to the service of writs of summons; the notice shall state the nature and grounds of the claim, and shall unless otherwise ordered by the Court or a Judge, be served within the time limited for delivering his statement of defence; such notice may be in the form or to the effect of the Form No. 18 in Appendix (B) hereto with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action. (Comp. R. Sup. C., Order 16, R. 18.)

**109**  
Court may  
direct notices  
to be given.

21. Where under Rule 19 of this order it is made to appear to the Court or a Judge, at any time before or at the trial, that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the Court or Judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper; and if made at the trial the Judge may postpone such trial as he may think fit. (*Ib.*, R. 19.)

**110**  
Appearance  
by third party.

22. If a person not a party to the action, who is served as mentioned in Rule 20, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the

notice has been given, he must enter an appearance in the action within 8 days from the service of the notice; in default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise; provided always, that a person so served and failing to appear within the said period of 8 days, may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit. (*Ib.*, R. 20.)

23. If a person not a party to the action served under these Rules appears pursuant to the notice, the party giving the notice may apply to the Court or a Judge for directions as to the mode of having the question in the action determined; and the Court or Judge, upon the hearing of such application, may, if it shall appear desirable so to do, give to the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions, as to the Court or Judge shall appear proper for having the question most conveniently determined, and with respect to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question, and as to the costs of the proceedings. (*See Ib.*, R. 21; *Yorkshire Waggon Coy. vs. Newport and Abercarne Coal Coy.*, 5 Q. B. D. 268.)

111  
Direction as to mode of determining questions in action.

24. A plaintiff is not to be unnecessarily delayed in recovering his claim by reason of questions between defendants in which the plaintiff is not concerned; and the Court or Judge is to give such direction as may be necessary to prevent such delay of the plaintiff, where this can be done, on terms or otherwise, without injustice to the defendants.

112  
Plaintiff not to be delayed by questions between defendants.

25. Where a person not already a party to a suit is to be served with notice of a judgment or order for the purpose of binding him as if he had been originally a party, and such person is an infant, or person of unsound mind not so found by inquisition or judicial declaration, the notice shall be served in the same manner as a writ of summons. (*See R. Sup. C.*, April, 1880, R. 7.)

113  
Service on infant or person of unsound mind.

26. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Judge, be entitled to appear either in Court or in Chambers on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability. The Judge may direct any other party to the cause to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as he shall think fit. (*R. Sup. C.*, April, 1880, R. 8.)

114  
Parties to administration proceeding.

### ORDER XIII.

#### JOINDER OF CAUSES OF ACTION.

1. Subject to the following Rules, the plaintiff may unite in the same action and in the same statement of claim several causes of action; but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or

115  
What causes of action may be joined.

- may make such other order as may be necessary or expedient for the separate disposal thereof. (R. Sup. C., Order 17, R. 1; R. S. O., c. 50, ss. 84-86; Eng. C. L. P. Act of 1852, s. 41.)
- 116**  
Action for recovery of land. 2.\* No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are or is held, and except claims in actions on mortgages for the recovery of the mortgage money and for foreclosure or sale. (R. Sup. C., Order 17, R. 2; R. S. O., c. 50, s. 84.)
- 117**  
Claims by or assignee in insolvency. 3. Claims by an assignee in insolvency as such shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity. (Comp. R. Sup. C., Order 17, R. 3.)
- 118**  
Claims by or against husband and wife. 4. Claims by or against husband and wife may be joined with claims by or against either of them separately. (*Ib.*, R. 4; R. S. O., c. 50, s. 86; Eng. C. L. P. Act of 1852, s. 40.)
- 119**  
Claims by or against executor. 5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator. (R. Sup. C., Order 17 R. 5.)
- 120**  
Joint and several claims. 6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. (*Ib.*, R. 6.)
- 121**  
Power to order separate trial. 7. The last 3 preceding Rules shall be subject to Rule 1 of this Order, and to the Rules hereinafter contained. (*Ib.*, R. 7.)
- 122**  
Application to strike out. 8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding. (*Ib.* R. 8; R. S. O., c. 50, s. 85; Eng. C. L. P. Act of 1852, s. 41.)
- 123**  
Order to strike out pleadings. 9. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of in one action, the Court or a Judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons and the indorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just. (R. Sup. C., Order 17, R. 9.)

#### ORDER XIV.

##### ACTIONS BY AND AGAINST LUNATICS AND PERSONS OF UNSOUND MIND.

**124**  
Insane persons.

In all cases in which lunatics and persons of unsound mind, not so found by inquisition or judicial declaration, might respectively before the passing of the Act have sued as plaintiffs, or

would have been liable to be sued as defendants, in any action or suit, they may respectively sue as plaintiffs in any action by their committees or next friends in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose. (R. Sup. C., Order 18; R. S. O. c. 40, s. 65, c. 220, ss. 49, 50.)

## ORDER XV.

### PLEADING GENERALLY.

1. The following Rules of pleading shall be substituted for those heretofore used in the Court of Chancery and in the Courts of Common Law. (Comp. R. Sup. C., Order 19, R. 1.)

125

Old rules abolished.

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of claim, the plaintiff shall within such time and in such manner as hereinafter prescribed, deliver to the defendant after his appearance a statement of his claim and of the relief or remedy to which he claims to be entitled; or a notice in lieu of such statement as provided by Order 17 of these Rules. (*Ib.*, R. 2.)

126

Statement of claim and defence.

(a) The defendant shall, within such time and in such manner as hereinafter prescribed, deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any). (*Ib.*, R. 2.)

(b) The plaintiff may, in like manner, deliver a statement of his reply (if any) to such defence, set-off, or counter-claim. (*Ib.*, R. 2.)

(c) Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same. (*Ib.*, R. 2; *See* G. O. Chy., No. 71.)

(d) The taxing officer shall have the like duty where the Court has not made such order. (*See* Order 50, R. 8, *post.*)

3. A defendant in an action may set-off, or set up by way of counter-claim, against the claims of the plaintiff, any right or claim whether such set-off or counter-claim sound in damages or not. (R. Sup. C., Order 19, R. 3.)

127

Set-off and counter-claim

(a) Such set-off or counter-claim shall have the same effect as a statement of claim in a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. (*Ib.* R. 3.)

(b) But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. (*Ib.*, R. 3.)

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved; such statement shall be divided into paragraphs, numbered consecutively; and each paragraph shall contain, as nearly as may

128

Form of pleadings.

- be, a separate allegation; dates, sums and numbers shall be expressed in figures and not in words; signature of counsel shall not be necessary; forms similar to those in Appendix (D) hereto may be used. (*Ib.*, R. 4.)
- 129**  
Copies of pleadings.
5. Every pleading may be either printed or written, or partly printed and partly written, but no more than 4 copies of any pleading or other document are to be allowed to any party in a cause or matter, exclusive of the draft, but inclusive of all other copies that may be required, or made, in the progress of the cause. (*See* R. Sup. C., Order 19, R. 5; G. O. Chy., Nos. 66, 403.)
- 130**  
Printing pleadings.
6. If more than 3 copies, exclusive of the draft, are required of any pleading or other document, the party may have the pleading or document printed for the purposes of the cause or matter, and in that case he shall in lieu of all charges for copies be allowed 30 cents per folio of the pleading or document, and his reasonable disbursements of procuring the same to be printed. (*See* R. Sup. C., Order 19, R. 5; G. O. Chy., No. 404.)
- 131**  
Delivery of pleadings.
7. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor; but if no appearance has been entered for any party, then such pleading or document shall be delivered by being posted up in the office from which the writ of summons was issued. (Comp. R. Sup. C., Order 19, R. 6.)
- 132**  
How pleadings delivered should be marked.
8. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is filed, and with the reference to the Division to which the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent (if any) of the party filing the same, or the name and address of the party filing the same if he does not act by a solicitor. (Comp. *Ib.*, R. 7.)
- 133**  
Relief claimed to be stated specifically.
9. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his statement of defence. If the plaintiff's claim be for discovery only, the statement of claim shall shew it. (*Ib.* R. 8.)
- 134**  
Distinct claims or defences.
10. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts. (*Ib.*, R. 9.)
- 135**  
Effect of document may be stated.
11. Where the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material. (R. Sup. C., Order 19, R. 24.)
- 136**  
Allegation of malice, etc.
12. Where it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact, without setting out the circumstances from which the same is to be inferred. (*Ib.*, R. 25.)

13. Where it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice is material. (*Ib.*, R. 26.)

137  
Allegation of notice.

14. Where any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail; and if in such a case, the person so pleading desires to rely in the alternative upon more contracts or relations than one, as to be implied from such circumstances, he may state the same in the alternative. (*Ib.*, R. 27.)

138  
Implied contract.

15. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

139  
Facts presumed need not be stated.

[*E.g.*—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.] (*Ib.*, R. 28.)

16. If either party wishes to deny the right of any other party to claim as executor, or as trustee, or as assignee in insolvency, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically, or the same will be taken to be admitted. (*See Ib.*, R. 11.)

140  
Denial of representative capacity.

17. Where a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise. (*Comp. Ib.*, R. 23.)

141  
Bare denial of contract only denial of the making.

18. No plea or defence shall be pleaded in abatement. (*Ib.*, R. 13.)

142  
No Plea in abatement.

19. No new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment is hereafter to be introduced by amendment of the statement of claim. (*See Ib.*, R. 14.)

143  
No new assignment.

20. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession. And he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned. (*Ib.*, R. 15; *Comp. R. S. O.*, c. 40, s. 87, c. 51, s. 14.)

144  
Defence to action for recovery of land.

21. Nothing in these Rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence without the leave of the Court or a Judge. (*R. Sup. C.*, Order 19, R. 16; *Reg. Gen. T. T.* 1856, No. 21, Ont.)

145  
Plea of not guilty by statute.

22. Admissions are, in all cases where it is practicable, to be by reference to the numbers of the paragraphs in the pleading to which they relate, with such qualifications as may be necessary or proper for protecting the interests of the party making

146  
Manner of making admissions.

such admissions: thus—"the defendant admits the allegations made in the first, second and third paragraphs of the plaintiff's claim." (*See* G. O. Chy., Nos. 125, 151.)

**147**  
What facts  
must be  
pleaded.

23. Each party in any pleading, not being a petition or a writ of summons, must allege all such facts not appearing in the previous pleading (if any), as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not so raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as (for instance) fraud, or that any claim has been barred by the Statute of Limitations, or has been released. (R. Sup. C., Order 19, R. 18.)

**148**  
Silence of  
pleading no  
admission.

24. Save as above otherwise provided, the silence of a pleading as to any allegation contained in the previous pleading of the opposite party is not to be construed into an implied admission of the truth of such allegation; and any allegation introduced for the purpose of preventing such implied admission, and not for the purpose of making intelligible the grounds of defence, is to be considered impertinent. (*See* *Ib.*, R. 21; G. O. Chy., No. 153; R. S. O. c. 50, s. 117.)

**149**  
Inconsistent  
pleadings.

25. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. (*Ib.*, R. 19.)

**150**  
Delivery in-  
cludes filing.

26. Delivering a statement of claim or defence or other pleading or proceeding, when mentioned or referred to in these Orders, includes filing, where, by the practice of the Courts heretofore or under these Orders, such statement, pleading or proceeding ought to be filed.

## ORDER XVI.

### PLEADING MATTERS ARISING PENDING THE ACTION.

**151**  
Before deliv-  
ery of defence.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. (Comp. R. Sup. C., Order 20, R. 1.)

**152**  
Before deliv-  
ery of defence  
to counter-  
claim.

2.\* If, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in reply, or be introduced by amendment into the statement of claim, within 3 weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge. (Comp. R. Sup. C., Order 20, R. 12; Order 24, R. 1; R. S. O., c. 50, s. 94; Eng. C. L. P. Act of 1852, s. 53; G. O. Chy., Nos. 149-155.)

**153**  
After delivery  
of defence.

3. Where any ground of defence arises after the defendant has delivered his statement of defence, he may within 8 days after such ground of defence has arisen, deliver a further defence setting forth the same, or, introduce the same by amendment into his statement of defence. (Comp. R. Sup. C., Order 20, R. 2; R. S. O., c. 50, ss. 106, 107; Reg. Gen. T. T. 1856, Nos. 22, 23, Ont.; Eng. C. L. P. Act of 1852, ss. 68-69; *See post*, Order 52, R. 8, and Order 55.)

4. Where a ground of defence to any set-off or counter-claim arises after the expiration of 3 weeks from the time of delivering the defence or the last of the defences, the plaintiff within 8 days after such ground of defence has arisen, may deliver a further reply setting forth the same, or may introduce such new ground of defence into his statement of claim by amendment. (Comp. *Ib.*, R. 2.)

154

After delivery of reply.

5.\*In any such case the amendment of the pleading filed may be made without an order, on filing a *præcipe* and an affidavit that the matter of the amendment arose within 8 days, next before the day of the making of such amendment. (See R. S. O., c. 50, s. 107.)

155

Amendment on *præcipe*.

6. In cases not provided for by the preceding rules, the leave of the Court or a Judge to amend the statement of claim or defence, or to deliver a further defence or reply, is to be obtained on notice supported by affidavit. (R. Sup. C., Order 27, R. 5, 6.)

156

Amendment by leave.

7. Where any defendant, in his statement of defence, whether by way of amendment or otherwise, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence; which confession may be in the Form No. 17 in Appendix (B) hereto, with such variations as circumstances may require; and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order. (Comp. R. Sup. C., Order 20, R. 3.)

157

Plaintiff may deliver confession of defence.

## ORDER XVII.

### STATEMENT OF CLAIM.

1. The delivery of statements of claim shall be regulated as follows:—

158

Time within which to be delivered.

(a)\*If the defendant shall not state that he does not require the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within 3 months from the time of the defendant's entering his appearance. (Comp. R. Sup. C., Order 21, R. 1 (a); Order 8, R. 6 (a) *ante.*; Order 15, R. 2, *ante.*; R. S. O., c. 50, s. 93.)

(b)\*The plaintiff may, if he think fit, deliver a statement of claim, with the writ of summons, or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than 3 months after the appearance has been entered, unless otherwise ordered by the Court or a Judge. (Comp. R. Sup. C., Order 21, R. 1 (b).)

(c) Where a plaintiff delivers a statement of claim without being required to do so, the Court or a Judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper. (*Ib.*, R. 1 (c).)

(d) The taxing officer shall have the same duty if no order is made by the Court or a Judge. (See R. Sup. C., Aug. 12, 1875, R. 18.)

**159**  
Notice in lieu  
of statement.

2. Where the writ is specially indorsed and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a Judge shall order him to deliver a further statement. Such notice may be either written or printed, or partly written and partly printed, and may be in the Form No. 16 in Appendix (B) hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement it shall be delivered within such time as by such order shall be directed; and if no time be so limited then within the time prescribed by Rule 1 of this Order. (R. Sup. C., Order 21, R. 4. See Order 3, R. 5 *ante*.)

## ORDER XVIII.

### DEFENCE.

**160**  
When defence  
must be  
delivered.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within 8 days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge. (Comp. R. Sup. C., Order 22, R. 1; R. S. O., c. 50, ss. 100, 101; c. 51, s. 3; G. O. Chy., Nos. 88, 89, 408 620; Eng. C. L. P. Act of 1852, s. 63.)

**161**  
Where no  
statement of  
claim.

2. A defendant, who has appeared in an action and stated that he does not require the delivery of a statement of claim and to whom a statement of claim is not delivered, may deliver a defence at any time within 8 days after his appearance, unless such time is extended by the Court or a Judge. (Comp. R. Sup. C., Order 22, R. 2. See Order 15, R. 2 *ante*; Order 25 *post*.)

**162**  
Where leave to  
defend given.

3. Where leave has been given to a defendant to defend under Order 10, Rule 1, he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within 8 days after the order. (*Ib.*, R. 3.)

**163**  
Costs of un-  
necessary  
denials.

4. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by either or any party ought to have been admitted, the Court may make such order as shall be just with respect to any extra costs occasioned by their having been denied, or not admitted. (Comp. *Ib.*, R. 4; G. O. Chy., Nos. 124, 125, 180, 234.)

**164**  
Where coun-  
ter-claim  
affects third  
persons.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. (Comp. R. Sup. C., Order 22, R. 5.)

**165**  
Service of  
defence on  
third party.

6. Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such

service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 9 in Appendix (B) hereto, or to the like effect. (*Ib.*, R. 6.)

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action. (*Ib.*, R. 7.)

166

Appearance  
by third party.

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim. (*Ib.*, R. 8.)

167

Reply by  
third party.

9. Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff, or any other person named in manner aforesaid as party to such counter-claim, contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time within 3 weeks from the delivery of such statement of defence, apply to the Court or a Judge for an order that such counter-claim may be excluded; and the Court or a Judge may, on the hearing of such application, make such order as shall be just. (*Comp. Ib.*, R. 9.)

168

Striking out  
counter-claim.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. (*Ib.*, R. 10.)

169

Judgment for  
balance of  
counter-claim.

## ORDER XIX.

### DISCONTINUANCE.

1. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, filed and served, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint; and thereupon he shall pay the defendant's costs of the action, or if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn.

170

Discontinu-  
ance.

Costs.

(a) Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.

(b) Save as in this Order otherwise provided, it shall not be competent for the plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before, or at or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out.

171

Withdrawal of  
record.

(c) The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but

172

Striking out  
defence.

it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

(Comp. R. Sup. C., Order 23, R. 1; Reg. Gen. T. T., 1856, No. 24, Ont.)

**173**  
Withdrawal of  
record by  
consent.

2. Where a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties. (R. Sup. C., Dec., 1875, R. 9.)

**174**  
Costs on dis-  
continuance.

3. A defendant may sign judgment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued. (R. Sup. C., June, 1876, R. 10; See Reg. Gen., T. T., 1856, No. 24, Ont.)

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## ORDER XX.

### REPLY AND SUBSEQUENT PLEADINGS.

**175**  
Delivery  
of reply.

1. A plaintiff shall deliver his reply, if any, within 3 weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge. (R. Sup. C., Order 24, R. 1.)

**176**  
Leave for  
subsequent  
pleadings.

2. No pleading, subsequent to reply, other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit. (*Ib.*, R. 2.)

**177**  
Time for  
delivery.

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within 4 days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge. (*Ib.*, R. 3.)

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## ORDER XXI.

### CLOSE OF PLEADINGS.

**178**  
When plead-  
ings closed.

As soon as either party has joined issue upon any pleading of the opposite party simply, without adding any further or other pleading thereto, or as soon as the time for amending the pleadings under these Rules or under any order made in the action or for delivering a reply or subsequent pleading or demurrer, has expired, the pleadings as between such parties shall be deemed to be closed without any joinder of issue being pleaded by any or either party. (Comp. R. Sup. C., Order 25; Order 29, R. 12; R. S. O., c. 50, s. 117.)

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## ORDER XXII.

### ISSUES.

**179**  
Settlement of  
issues.

Where in any action it appears to a Judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the Judge. (R. Sup. C., Order 26.)

## ORDER XXIII.

## AMENDMENT OF PLEADINGS.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply; or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action. All such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties. (R. Sup. C., Order 27, R. 1. Comp. R. S. O., c. 49, ss. 5, 8; c. 50, ss. 120, 270.)

**180**  
Amendment  
with leave.

2. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of 4 weeks from the appearance of the defendant who shall have last appeared. (Comp. R. Sup. C., Order 27, R. 2; Order 24, R. 1; Order 25; Eng. C. L. P. Act of 1852, s. 222; *Ib.*, 1856, s. 96; *Ib.*, 1860, s. 36.)

**181**  
Amendment  
by plaintiff  
without leave.

3. A defendant who has set up in his defence any set-off or counter-claim, may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or in case there be no reply, then within 28 days from the filing of his defence. (Comp. R. Sup. C., Order 27, R. 3.)

**182**  
Amendment  
by defendant  
without leave.

4. Where any party has amended his pleadings under either of the last 2 preceding Rules, the opposite party may, within 8 days after the delivery to him of the amended pleading, apply to the Court or a Judge, to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it, subject to such terms as to costs or otherwise as may seem just. (*Ib.*, R. 4.)

**183**  
Disallowance  
of amendment.

5. Where any party has amended his pleading under Rule 2 or 3 of this Order, the other party may without leave amend his former pleading within 4 days after the delivery of the pleading so amended under such Rule: or he may apply to the Court or a Judge for leave to amend his former pleading within such further time and upon such terms as may seem just. (Comp. *Ib.*, R. 5; Order 24, R. 3; G. O. Chy., Nos. 153-155.)

**184**  
Leave to plead  
or amend after  
amendment.

6. Either party may amend his pleading at any time without order on filing the written consent of the opposite party or his solicitor.

**185**  
Amendment  
by consent.

7. In all cases not provided for by the preceding Rules numbered from 2 to 6, of this Order, application for leave to amend any pleading may be made by either party to the Court or a Judge in Chambers, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise, as may seem just. (R. Sup. C., Order 27, R. 6.)

**186**  
Application  
for leave to  
amend.

8. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within 14 days from the date of the

**187**  
Time limited  
for amend-  
ment.

order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such 14 days, as the case may be, become, *ipso facto*, void, unless the time is extended by the Court or a Judge. (Comp. *Ib.*, R. 7; G. O. Chy. No. 83.)

**188**  
How alterations to be made.

9. A pleading may be amended by written alterations in the copies filed and served and by additions on paper to be interleaved therewith if necessary; unless the amendments require the insertion of more than 200 words in any one place, or are so numerous or of such a nature that the making them in the copies filed and served would render the same difficult or inconvenient to read; in either of which cases the amendment must be made by delivering a print or fresh copy of the pleading as amended. (Comp. R. Sup. C., Order 27, R. 8.)

**189**  
Marking of amended pleadings.

10. Where any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz: "Amended day of . . ." (*Ib.*, R. 9.)

**190**  
Delivery of amended pleadings.

11. Where a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same. (*Ib.*, R. 10.)

## ORDER XXIV.

### DEMURRER.

**191**  
Demurrer when allowed.

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not shew any cause of action or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply or as the case may be, to which effect can be given by the Court as against the party demurring. (*See R. Sup. C.*, Order 28, R. 1.)

**192**  
Form of demurrer.

2. A demurrer shall state specifically whether it is to the whole or to a part, and if to part only, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form No. 73 in Appendix (D) hereto. If no ground, or only a frivolous ground of demurrer is stated, the Court or a Judge may set aside such demurrer, with costs. (*Ib.*, R. 2; R. S. O., c. 50, s. 128.)

**193**  
Delivery of demurrer.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading in the action. (*R. Sup. C.*, Order 20, R. 3.)

**194**  
Demurrer and defence to be combined.

4. A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party, he shall combine such demurrer and other pleading. (*Ib.*, R. 4.)

**195**  
Plea and demurrer to same pleading without leave.

5. Either party may without leave plead and demur to the same pleading at the same time by filing an affidavit by such party distinctly denying some one or more material statement or statements in such pleading; or stating that the several mat-

ters sought to be pleaded by way of confession and avoidance are respectively true in substance and in fact; and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law. The affidavit is to be annexed to and filed with the plea and demurrer, and a copy of the affidavit is to be served with the plea and demurrer. (*See R. S. O., c. 50, s. 118.*)

6. If the party demurring desires to be at liberty to plead as well as to demur to the matter demurred to without filing such affidavit, he may, before demurring, apply to the Court or a Judge for an order giving him leave to so plead and demur, such application being supported by such affidavit as now required in the Superior Courts of Law; and the Court or Judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, and may direct which issue shall be first disposed of; or may make such other order and upon such terms as may be just. (*See R. Sup. C., Order 28, R. 5; R. S. O., c. 50, s. 118; Reg. Gen. of May 21, 1877, 41 Q. B. U. C., 565.*)

196

Leave to demur and plead to the same matter.

7. Where a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice thereof to the other party. If the demurrer shall not be entered and notice thereof given within 10 days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient, for the same purposes, and with the same result as to costs, as if it had been allowed on argument. (*R. Sup. C., Order 28, R. 6; G. O. Chy., Nos. 121, 146, 418.*)

197

Entry for argument.

8. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended unless by order of the Court or a Judge; and no such order shall be made except on payment of the costs of the demurrer. (*Comp. R. Sup. C., Order 28, R. 7; Reg. Gen. T. T., 1856, Nos. 14, 15, Ont.*)

198

Effect of no entering.

9. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the Court otherwise order, pay to the demurring party the costs of the demurrer. (*R. Sup. C., Order 28, R. 8.*)

199

No amendment pending demurrer.

200

Costs of successful demurrer.

10. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order. (*Ib., R. 9.*)

201

Costs of action on successful demurrer to plaintiff's whole claim.

202

Effect of demurrer to part being allowed.

11. Where a demurrer to any pleading or part of a pleading is allowed in a case not falling within the last preceding Rule, then (subject to the power of the Court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded. (*Ib., R. 10.*)

203

Costs of unsuccessful demurrer.

12. Where a demurrer is overruled, the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct. (*Ib., R. 11.*)

204

Pleadings after demurrer is overruled.

13. Where a demurrer is overruled, the Court may make such order, and upon such terms as to the Court shall seem right, for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to. (*Ib., R. 12.*)

**205**  
Form of entry  
for argument.

14. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 85 in Appendix (E). (*Ib.*, R. 13.)

ORDER XXV.

DEFAULT OF PLEADING.

**206**  
Dismissal of  
action on  
plaintiff's  
default in  
claim for debt.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of such time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order, on such terms, as to the Court or Judge shall seem just. (R. Sup. C., Order 29, R. 1.)

**207**  
Judgment on  
defendant's  
default in  
claim for debt.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs. (*Ib.*, R. 2; R. S. O., c. 50, s. 150.)

**208**  
Where several  
defendants.

3. Where in any such action as in the last preceding Rule mentioned there are several defendants, if one of them makes default as mentioned in the last preceding Rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants. (R. Sup. C., Order 29, R. 3.)

**209**  
Interlocutory  
judgment on  
default in  
claim for  
damages.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant, and the value of the goods, and the damages, or the damages only, as the case may be, shall be assessed as hitherto. But the Court or a Judge may order that the value and amount of damages, or either of them, shall be ascertained in any other way in which any question arising in an action may be tried. (*Comp., Ib.*, R. 4.)

**210**  
Where several  
defendants.

5. Where in any such action as in Rule 4 mentioned there are several defendants, if one of them makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others. And in such case, damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct. (*Ib.*, R. 5.)

**211**  
Where debt  
and damages  
claimed.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rule 4. (*Ib.*, R. 6.)

**212**  
Default by  
defendant in  
action for  
land.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter

a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs. (*Ib.*, R. 7.)

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, and some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in Rules 4 and 5. (*Ib.*, R. 8.)

213

Where claim for land and damages.

9. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court shall consider the plaintiff to be entitled to. (*Ib.*, R. 10; G. O. Chy. No. 270.)

214

Other actions.

10. Where, in any such action as mentioned in the last preceding Rule, there are several defendants, then, if one of such defendants makes such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants. (R. Sup. C., Order 29, R. 11.)

215

Where several defendants, and one makes default.

11. In any case in which issues arise other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties. (R. Sup. C., Order 29, R. 13.)

216

In case of issues between parties other than plaintiff and defendant.

12. Any judgment by default, whether under this Order or under any other of these Rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit. (*Ib.*, R. 14.)

217

Judgment by default may be set aside on terms.

## ORDER XXVI.

### PAYMENT INTO COURT IN SATISFACTION.

1. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the Court or a Judge at any later time, pay into Court a sum of money by way of satisfaction or amends. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein. (R. Sup. C., Order 30, R. 1; R. S. O., c. 50, ss. 108-110; Reg. Gen. T. T., 1856, Nos. 11-13, Ont.)

218

In what cases and at what time.

2. Such sum of money shall be paid as hitherto into the proper bank or to the proper officer, and the proper officer shall give a receipt for the same. If such payment be made before delivering his defence, the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 21, in

219

How paid.

Appendix (B) hereto. (Comp. R. Sup. C., Order 30, R. 2 ; R. S. O., c. 50, ss. 109, 121.)

**220**  
Payment out

3. Money paid into Court as aforesaid may, unless otherwise ordered by a Judge, be paid out to the plaintiff, or to his solicitor, on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officers of the Court, or one of the officers, whose duty it is to sign or countersign the cheque. (Comp. R. Sup. C., Order 30, R. 3 ; R. S. O., c. 50, s. 109 ; Reg. Gen. T. T., 1856, No. 11, Ont.)

**221**  
Acceptance in satisfaction.

4. The plaintiff, if payment into Court is made before delivering a defence, may within 4 days after receipt of notice of such payment, or if such payment is first stated in a defence delivered then, may, before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in ; in which case he shall give notice to the defendant in the Form No. 22 in Appendix (B) hereto, and shall be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and in case of non-payment within 48 hours, to sign judgment for his costs so taxed. (R. Sup. C., Order 30, R. 4 ; R. S. O., c. 50, s. 111.)

## ORDER XXVII.

### DISCOVERY AND INSPECTION.

**222**  
Right to have examination taken in shorthand.

1. In case of an examination before the trial, or otherwise than at the trial, of an action, if the examining party desires to have such examination taken in shorthand, he shall be entitled to have the examination taken before any examiner residing at the place of examination competent to take the evidence in shorthand, except where the Court or a Judge sees fit to order otherwise. (*See* 41 Vic., c. 8, s. 8, Ont.)

**223**  
Costs of preliminary examination.

2.\* The costs of every examination of parties or witnesses before the trial, or otherwise than at the trial of an action, as authorized by the present practice of the respective Courts whose jurisdiction is vested in the High Court, shall be costs in the cause, but the Court or Judge in adjusting the costs of the action shall at the instance of any party inquire, or cause inquiry to be made, into the propriety of having made such examination ; and if it is the opinion of the Court or Judge, or the taxing master, as the case may be, that such examination has been had unreasonably, vexatiously, or at unnecessary length, the costs occasioned by the examination shall be borne in whole or in part by the party in fault. The taxing master may make such inquiry without any direction. (Comp. R. Sup. C., Order 31, R. 2 ; R. S. O., c. 50, ss. 156-167 ; Order 50, R. 7 *post*.)

**224**  
Order for production of documents.

3. It shall be lawful for the Court or a Judge at any time during the pendency of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any matter in question in such action or proceeding, as the Court or Judge shall think right ; and the Court may deal with such documents, when produced, in such manner as shall appear just. (*Ib.*, R. 11 ; *See* R. S. O., c. 50, ss. 169-175.)

4. Any party may, after the close of the pleadings, or when the application is on behalf of a plaintiff after the time for delivering the defence of any party to the action has expired, obtain an order of course upon præcipe, directing such party within 10 days after the service thereof, to make discovery on oath of the documents which are or have been in his possession or power, relating to any matters in question in the action. (R. Sup., G. O. Chy., No. 134.) And to produce and deposit the same with the proper officer for the usual purposes. (Comp. C., Order 31, R. 12; R. S. O., c. 50, s. 169.)

**225**  
Discovery  
before and  
after close of  
pleadings.

5. The affidavit to be made by a party against whom such order as is mentioned in the last preceding two Rules has been made, shall specify which, if any, of the documents therein mentioned, he objects to produce, and said affidavit may be in the Form No. 33 in Appendix (E) hereto, with such variations as circumstances may require. (Comp. R. Sup. C., Order 31, R. 13; G. O. Chy., Nos. 135, 137, and sched. "G" thereto.)

**226**  
Affidavit in  
answer.

6. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, to give notice in writing to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice. (R. Sup. C., Order 31, R. 14.)

**227**  
Notice to pro-  
duce docu-  
ments referred  
to in pleading  
or affidavits.

7. No allowance is to be made for any notice or inspection under the preceding Rule, unless it is shewn to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection. (R. Sup. C., Aug., 1875, R. 15.)

**228**  
Inspection of  
documents.

8. Notice to any party to produce any documents referred to in his pleading or affidavits may be in the form No. 23 in Appendix (B) hereto, or to the same effect. (R. Sup. C., Order 31, R. 15; R. Sup. C., April, 1880, Form B, 10 a.)

**229**  
Form of notice  
to produce.

9. The party to whom such notice is given shall, within 2 days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 5; or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within 4 days from the receipt of such notice; deliver to the party giving the same a notice stating a time within 3 days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce and on what ground. Such notice may be in the Form No. 25, in Appendix (B) hereto, with such variations as circumstances may require. (*Ib.*, R. 16; *See* R. S. O., c. 50, s. 170.)

**230**  
Notice to  
inspect.

10. If the party served with notice under Rule 8 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge for an order for inspection. (R. Sup. C., Order 31, R. 17.)

**231**  
Order for  
inspection on  
default.

11. Every application for an order for inspection of documents shall be to a Judge. And, except in the case of docu-

**232**  
Application  
for order.

ments referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit shewing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. (*Ib.*, R. 18.)

**233**  
When inspection objected to.

12. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, may order that such issue or question be determined first, and reserve the question as to the discovery or inspection. (*Ib.*, R. 19.)

**234**  
Consequences of disobeying an order for discovery.

13. If any party fails to comply with any order for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution; and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and the party who obtained the order for discovery or inspection may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly. (*Comp. Ib.*, R. 20; G. O. Chy., No. 144.)

**235**  
Application for attachment.

14. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may shew in answer to the application that he has had no notice or knowledge of the order. (*Ib.*, R. 21.)

**236**  
Attachment of Solicitor.

15. A solicitor upon whom an order against any party for discovery or inspection is served under the last Rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to an attachment. (*Ib.*, R. 22; *Comp. G. O. Chy.*, No. 136.)

**237**  
Part of examination to be evidence.

16. Any party may, at the trial of an action or issue, use in evidence any part of the examination of the opposite parties; provided always, that in such case the Judge may look at the whole of the examination, and if he shall be of opinion that any other part is so connected with the part to be so used that the last mentioned part ought not to be used without such other part, he may direct such other part to be put in evidence. (*Comp. R. Sup. C.*, Order 31, R. 23; G. O. Chy., No. 146.)

## ORDER XXVIII.

### ADMISSIONS.

**238**  
Notice of admission of statements of opponent.

1. Each party is to admit such of the material allegations contained in the statement of claim or defence of the opposite party as are true; or he may give notice, by his own statement or otherwise, that he admits for the purposes of the action the truth of the case generally, or of any part of the case, stated or referred to in the statement of claim or defence of the opposite or any other party. (*R. Sup. C.*, Order 32, R. 1; G. O. Chy., Nos. 124, 150, 180; Order 19, R. 4, *ante.*)

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense. (R. Sup. C., Order 32, R. 2; *See* R. S. O., c. 50, s. 171; G. O. Chy., No. 156.)

239  
Notice to admit documents.

3. A notice to admit documents may be in the Form No. 26, in Appendix (B) hereto. (R. Sup. C., Order 32, R. 3.)

240  
Form of notice.

4. The production of any written admissions purporting to be admissions in the action, and to be made in pursuance of any notice to admit documents or otherwise, and to be signed by the solicitor of the party by whom, or on whose behalf, they purport to be made, shall be sufficient *prima facie* evidence of such admissions. (Comp. *Ib.*, R. 4; G. O. Chy., No. 48; Reg. Gen. T. T., 1856, No. 159, Ont.)

241  
Proof of admissions.

## ORDER XXIX.

### INQUIRIES AND ACCOUNTS.

1. The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. (R. Sup. C., Order 33; *See* R. S. O. c. 50, ss. 189, 197.)

242  
May be directed at any stage.

2.\* Where a reference is made to any official or other referee under the Act, the referee shall have all the powers as to certifying and amending of a Judge of the High Court of Justice, and shall make his report of and concerning the matters ordered to be tried pursuant to the statute;

243  
Provisions of reference to official or other referee.

(a) The referee may, if he think fit, examine the parties to the action, and their respective witnesses, upon oath or affirmation, and the parties shall produce before the referee all books, deeds, papers and writings in their or either of their custody or power relating to the matters ordered to be tried;

(b) Neither the plaintiff nor the defendant shall bring or prosecute any action against the referee, or against each other, of or concerning the matters ordered to be tried, and if either party by affected delay or otherwise wilfully prevent the referee from making his report, he or they shall pay such costs to the other as the High Court, or any Judge thereof, may think reasonable and just;

(c) In the event of the referee declining to act, or dying before he has made his report, the parties may, or if they cannot agree, one of the Judges of the High Court may, upon application by either party, appoint a new referee. (R. Sup. C., April, 1850, Forms H, 31 & 32.)

3.\* Where a reference is made by order to the award of an arbitrator, the arbitrator shall have all the powers as to certifying and amending of a judge of the High Court of Justice;

244  
Provisions of order of reference to an arbitrator.

(a) The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award) on or before the time mentioned in the order, or on or before such further day as the arbitrator make from time to time appoint and signify in writing signed by him and indorsed on the order;

And the said parties shall in all things abide by and obey the award so to be made;

And the arbitrator may (if he think fit) examine the said parties to the action, and their respective witnesses, upon oath or affirmation;

And the parties shall produce before the arbitrator all books, deeds, papers and writings in their or either of their custody or power relating to the matters in difference;

And neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters referred;

And if either party by affected delay or otherwise wilfully prevent the arbitrator from making an award, he or they shall pay such costs to the other as the arbitrator may think reasonable and just;

And in the event of either of the parties disputing the validity of the award, or moving to set it aside, the Court or Judge shall have power to remit the matters referred or any or either of them to the reconsideration of the arbitrator;

And in the event of the arbitrator declining to act or dying before he has made his award, the parties may, or if they cannot agree, the Court or a Judge may, on application by either side, appoint a new arbitrator;

And unless restrained by any order of the High Court of Justice, or of any Judge thereof, the party or parties in whose favor the award shall be made shall be at liberty within 14 days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under the order, and under the award, together with the costs of the judgment. (R. Sup. C., April, 1880, Form H, 22.)

245

Order to be read as containing above provisions.

4.\* An order under either of the preceding rules shall be read as if it contained the provisions set forth in the said rule, and shall not set forth the said provisions, but may contain any variation therefrom, and any other directions which the Court or Judge shall see fit to make.

## ORDER XXX.

### QUESTIONS OF LAW.

246

Parties may concur in stating special case.

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. (Comp. R. Sup. C., Order 34, R. 1; R. S. O., c. 40, s. 85; c. 50, ss. 181, 185.)

(a) The parties to a special case may, if they think fit, enter into an agreement in writing, that on the judgment of the

Court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the action; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal. (*See* R. Sup. C., April 1880, R. 9; R. S. O., c. 50, s. 182.)

(b) Every special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. (R. Sup. C., Order 34, R. 1.)

(c) Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. (R. Sup. C., Order 34, R. 1; Comp. R. S. O., c. 50, ss. 181, 185.)

2. If it appears to the Court or a Judge, either from the statement of claim or defence or reply, or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised either by special case or in such other manner as the Court or Judge may deem expedient; and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed. (R. Sup. C., Order 34, R. 2.)

**247**  
Preliminary  
question of  
law.

3. Every special case shall be signed by the several parties or their solicitors, and shall be filed by the plaintiff. Copies for the use of the Judges shall be delivered by the plaintiff. (Comp. *Ib.*, R. 3.)

**248**  
Preparing  
case.

4. No special case in an action to which a married woman, infant, or person of unsound mind is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true. (*Ib.*, R. 4.)

**249**  
Persons under  
disability.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 85 in Appendix (E) hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument. (*Ib.*, R. 5.)

**250**  
Entry for  
argument.

6. This Order shall apply to every special case stated in an action or in any proceeding incidental to an action; whether under the said or any other Act. (*See* R. Sup. C., April, 1880, R. 10.)

**251**  
Application  
of order.

## ORDER XXXI.

## TRIAL.

**252**  
Venue  
abolished.

1. \* There shall be no local venue for the trial of any action except an action of ejectment, but the plaintiff shall in his statement of claim name the county town in which he proposes that the action should be tried, and the action shall, unless a Judge otherwise orders, be tried in the place so named. Any order of a Judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court. (Comp. R. Sup. C., Order 36, R. 1.)

**253**  
Notice of trial.

2. \* After the close of the pleadings either party may give notice of trial for the next sitting of the Court which shall be not less than 10 days thereafter for the place so named or ordered; or if the plaintiff does not give such notice of trial, and if the pleadings were closed 6 weeks before the commencement of such sitting, the defendant, instead of giving notice of trial, may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just. (Comp. R. Sup. C., June 1876, R. 13; R. Sup. C., Order 36, R. 4; G. O. Chy., Nos. 161, 273.)

**254**  
Order to dis-  
miss for want  
of prosecution.

**255**  
Trial of differ-  
ent questions  
in different  
modes.

3. Subject to the provisions of the Act and of the preceding Rules, the Court or a Judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others. (Comp. R. Sup. C., Order 36, R. 6.)

**256**  
Trial by jury.

4. Every trial of any question or issue of fact by a jury shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges. (*Ib.*, R. 7.)

**257**  
Form of notice  
of trial.

5. Notice of trial shall state whether it is for the trial of the action or of issues therein; and the place and day for which it is to be entered for trial. It may be in the Form No. 14 in Appendix (B), with such variations as circumstances may require. (Comp., *Ib.*, R. 8.)

**258**  
10 days'  
notice.

6. 10 days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be 5 days' notice. (*Ib.*, R. 9; Comp. R. S. O., c. 50, s. 244; G. O. Chy., No. 163.)

Short notice  
5 days.

**259**  
Notice must be  
given before  
entry of cause.

7. Notice of trial shall be given before entering the action for trial. (R. Sup. C., Order 36, R. 10.)

**260**  
Entry for trial.

8. After notice of trial is given either party may enter the action for trial. If both parties enter the action for trial, it shall be tried in the order of the plaintiff's entry. (R. Sup. C., Order 36, R. 15.)

**261**  
Copy of plead-  
ings.

9. \* The party entering the action for trial shall at the same time deliver to the proper officer one copy of the whole of the pleadings in the action, for the use of the Judge at the trial, such copy to be certified as a true copy by the officer having charge of the pleadings filed. (Comp. *Ib.*, R. 17; R. Sup. C., Dec., 1875, R. 14.)

10. Where the Judges consider that public convenience so requires, provision may be made for the trial at a separate time, or before another Judge, of the actions from the Chancery Division. **263** Separate trials for actions in Chy. Division.

11. Actions in all the Divisions shall be entered at any time during the 5 days next before the first day of the Assizes or sittings, and on said first day at any time before noon; but the Judge may permit any action to be entered after the time above limited, if upon facts disclosed on affidavit, or on the consent of both parties, he sees fit to do so. (*See R. S. O., c. 50, s. 248.*) **264** Time of entry for trial.

12. Where the Deputy Clerk of the Crown and Deputy Registrar in any County are not the same person, all actions shall be so entered with the Deputy Clerk of the Crown, except in cases under Rules 11 and 14, but the Deputy Registrar shall attend the trial of actions brought in the Chancery Division, and shall be entitled to the same fee as if the cause had been set down with him for hearing. **265** Actions with whom entered.

13. In case of provision being made for the trial at a separate time and place of actions brought in or assigned to the Chancery Division, the actions shall be entered for trial with the Registrar, or Deputy Registrar, as the case may be, according to the present practice of the Court of Chancery. **266** When entry to be made with Registrar.

14. The party entering any action for trial shall indorse on the copy of the pleadings delivered as aforesaid, whether the matter for trial is an assessment of damages, or an undefended issue, or a defended issue; and the officer with whom the action is so entered shall make two lists, and enter each action in one of the said lists, in the order in which the actions are entered with him; and in the first list he shall enter all the assessments and undefended issues, and in the second list all defended issues, and the Judge at the trial may call on the actions in the first list at such time and times as he finds most convenient for disposing of the business. (*See R. S. O., c. 50, s. 249.*) **267** Separate lists of defended and undefended issues

15. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him. (*R. Sup. C., Order 36, R. 18.*) **268** Non-appearance of defendant.

16. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the claim, but if he has a counter-claim he may prove such claim so far as the burden of proof lies upon him. (*Ib., R. 19.*) **269** Non-appearance of plaintiff.

17.\* Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a Judge upon such terms as may seem fit; such application may be made at the Assizes or sittings at which the trial took place, or in Toronto. (*Comp. Ib., R. 20.*) **270** Setting aside judgment by default.

18.\* Where, through accident or mistake or other cause, any party omits or fails to prove some fact material to his case, the Judge may proceed with the trial, subject to such fact being afterwards proved at such time, and subject to such terms and conditions as to costs and otherwise, as the Judge shall direct; and if the case is being tried by a jury, the Judge may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed; and if not so proved, judgment is to be **271** Evidence omitted by accident or mistake, how supplied.

- entered for the opposite party, unless the Court or a Judge otherwise directs.
- 272**  
Adjournment of trial. 19. The Judge, if he think it expedient for the interest of justice, may postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit. (*Ib.*, R. 21; See R. S. O., c. 50, s. 259.)
- 273**  
Judge may direct entry of judgment; or reserve judgment. 20. Upon the trial of an action, the Judge may, at or after the trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration. (Comp. R. Sup. C., December, 1876, R. 3; R. S. O., c. 50, s. 262.)
- 274**  
By whom entries of findings to be made. 21.\* The Registrar, Clerk of Assize or other officer present at the trial shall enter all such findings of fact as the Judge may at the trial direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, such entry to be made in a book to be kept for the purpose, and also to be indorsed on the copy of the pleadings delivered under Rule 9 of this order. (Comp. R. Sup. C., Order 36, R. 23.)
- 275**  
Certificate of Judge or Officer. 22.\* The said indorsement or the certificate of the said officer or the certificate of the Judge shall be a sufficient authority to the proper officer for entering judgments to enter judgment accordingly. The certificate may be in the Form No. 178 in Appendix (H) hereto. (Comp. *Ib.*, R. 24.)
- 276**  
Trial before referee. 23.\* Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the Court or a Judge, hold the trial at, or adjourn it to, any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors if any, which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem* in a similar manner as in actions tried by a jury. (Comp. *Ib.*, R. 30.)
- 277**  
Proceedings at trial before referee. 24. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a Judge of the High Court, but not so as to make the tribunal of the referee a public court of justice. (*Ib.*, R. 31.)
- 278**  
Referee has authority of Judge. 25. Subject to any such order as last aforesaid, the referee shall have the same authority in the conduct of any reference or trial as a Judge of the High Court when presiding at any trial before him. (*Ib.*, R. 32.)
- 279**  
But not to commit to prison. 26. Nothing in these Rules contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise. (*Ib.*, R. 33.)
- 280**  
Referee may submit questions to the Court. 27. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct. (*Ib.*, R. 34 as amended by R. Sup. C., March 1879, R. 5; R. S. O., C. 50, s. 211.)
- 281**  
Court may remit case, or decide on evidence taken. 28. The Court shall have power to require any explanations or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration, to the same or any other referee; or the Court may decide

the question referred to any referee on the evidence taken before him, either with or without additional evidence, as the Court may direct. (*Ib.*)

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### ORDER XXXII.

#### EVIDENCE GENERALLY.

1. In the absence of any agreement between the parties, and subject to these Rules, the witnesses at the trial of any action or at any assessment of damages, shall be examined *viva voce* and in open Court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined before an examiner; provided that where it appears to the Court or Judge that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit. (Comp. R. Sup. C., Order 37, R. 1; G. O. Chy., No. 176.)

282

Evidence on  
trial of action.

2.\* Upon any motion, petition or summons, evidence may be given by affidavit; but any person having made an affidavit to be used, or which shall be used on any motion, petition or other proceeding before the court, shall be bound to attend for the purpose of being cross-examined, on being served with a writ of subpoena *ad testificandum*, but the court, nevertheless, may act on the evidence before it at the time, and may make such interim order, or otherwise, as appears necessary to meet the justice of the case. (Comp. R. Sup. C., Order 37, R. 2; S. O. Chy., No. 268.)

283

Evidence on  
motion, or  
petition.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same. (*Ib.*, R. 3; G. O. Chy., No. 259.)

284

Affidavits how  
framed.

4. The Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein, on such terms, if any, as the Court or Judge may direct. (R. Sup. C., Order 37, R. 4; G. O. Chy., Nos. 266-269.)

285

Depositions.

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### ORDER XXXIII.

#### COMMISSIONS TO EXAMINE WITNESSES.

(See rules of April, 1880, form H, 30.)

1. In the case of a commission for the examination of witnesses, all parties shall be at liberty to examine upon inter-

286

Mode of ex-  
amination.

gatories and *viva voce*, upon the subject matter thereof or arising out of the answers thereto, such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross interrogatories and *viva voce* on the subject matters thereof or arising out of the answers thereto, the party producing the witness for examination being at liberty to re-examine him *viva voce*; and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto, returned with the said commission.

287

Notice of examination.

2. Eight days previously to the examination of any witness, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally, or by leaving it at their usual place of abode or business, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

288

Copies as evidence.

3. In the event of any witness on his examination, cross-examination or re-examination, producing any book, document, letter, paper or writing, and refusing for good cause to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extract, shall be annexed to the witnesses' deposition.

289

Oath of witness.

4. Every witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion, by or before the said commissioners or commissioner.

290

Examination through an interpreter.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

291

Depositions to be signed.

6. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

292

Return of commission and use thereof as evidence.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the judge or officer on or before such day as may be ordered in that behalf, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of the action, by and on behalf of the said parties respectively, saving all just exceptions, without any

other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the party, as to his belief of such absence.

8. The trial of the action shall be stayed until the return of the commission. 292½ Stayed.

9. Every order for a commission shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variations therefrom, and any other directions, which the Court or Judge shall see fit to make. 293 Order for commission to be read as including above particulars.

## ORDER XXXIV.

### EVIDENCE BY AFFIDAVIT.

1. In case the parties in any action consent to the evidence being taken by affidavit as between the plaintiff and the defendant, the plaintiff within 14 days after such consent has been given, or within such time as the parties may agree upon, or a Judge in Chambers may allow, shall file his affidavits and deliver to the defendant or his solicitor a list thereof. (R. Sup. C., Order 38, R. 1.) 294 When to be filed by plaintiff.

2. The defendant within 14 days after delivery of such list, or within such time as the parties may agree upon, or a Judge in Chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof. (*Ib.*, R. 2; G. O. Chy., Nos. 268, 269.) 295 When to be filed by defendant.

3. Within 7 days after the expiration of the said 14 days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matter strictly in reply, and shall deliver to the defendant or his solicitor a list thereof. (R. Sup. C., Order 38, R. 3.) 296 Filing affidavits in reply.

4. Where the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination before the Court at the trial, such notice to be served at any time before the expiration of 14 days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production. (*Ib.*, R. 4.) 297 Cross-examination on affidavit.

5. The party to whom such notice as is mentioned in the last preceding Rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined. (*Ib.*, R. 5.) 298 Compelling attendance of witness.

6. Where the evidence in any action is under this Order taken by affidavit, the notice of motion for judgment thereon shall be given at the same time or times after the close of the evidence, as in other cases is by these Rules provided after the close of the pleadings. (Comp. *Ib.*, R. 6.) 299 Notice of motion for judgment.

## ORDER XXXV.

## MOTION FOR NEW TRIAL.

- 300**  
Application to what Court. 1. Where there has been a trial by a jury, any application for a new trial shall be to a Divisional Court. (*See* R. Sup. C., Dec., 1876, R. 5.)
- 301**  
Application how made. 2. An Application to a Divisional Court for a new trial shall be by motion calling on the opposite party to shew cause at the expiration of 8 days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. (R. Sup. C., March, 1879, R. 6.)
- 302**  
Time to move. 3. An application to a Divisional Court for a new trial, shall be made within the first 4 days of the next following sittings of the Divisional Court, for hearing such applications.  
(*Comp. Ib.*, R. 6; R. Sup. C., March, 1879, R. 6; R. S. O., c. 50, ss. 284-286.)  
(a)\* In case the decision of a question raised at the trial is reserved, and is not given until the sittings aforesaid by the judge reserving the same, all motions respecting the trial shall be made within 10 days after the day on which the decision is given, if so many days expire in such sittings, and if not, then within the first 4 days of the ensuing sittings; and until the time for moving as aforesaid has expired, judgment shall not be signed unless the judge who tried the action certifies in the manner hereinafter provided, (R. S. O. c. 50, s. 285.)  
(b)\* In case of a trial during the sittings of a divisional court, all motions respecting the same shall be made within 6 days after the day on which the verdict is rendered, if so many days expire in such sittings, and if not, then within the first 4 days of the ensuing sittings; and until the time for moving as aforesaid has expired, judgment shall not be signed unless the judge who tried the action certifies under his hand, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification. (R. S. O. c. 50, s. 286.)
- 303**  
Service of order nisi. 4. A copy of the order shall be served on the opposite party within 4 days from the time of the same being made. (*Comp. R. Sup. C.*, Order 39, R. 2.)
- 304**  
Restrictions on new trials. 5. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only. (*Ib.*, R. 3; *See* R. S. O. c. 50, s. 289.)
- 305**  
New trial as to part. 6. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question. (*Ib.*, R. 4; *See* R. S. O. c. 50, s. 289.)
- 306**  
Stay of proceedings. 7. An order to shew cause shall be a stay of proceedings in the action, unless the Court shall order that it shall not be so as to the whole or any part of the action. (R. Sup. C., Order 39, R. 5.)
- 307**  
Counsel supporting rule nisi to begin and have reply. 8.\* On the argument of a rule nisi the counsel of the party supporting the application shall begin, and shall state fully the grounds of the application, and shall have the reply.

## ORDER XXXVI.

## MOTION FOR JUDGMENT.

1. Except where by the Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment. (R. Sup. C., Order 40, R. 1; G. O. Chy., Nos. 270-272;) Order 31, R. 21-23 *ante*; Order 37, R. 4, 5 *post*.

309

How judgment obtained.

2. Where at or after the trial of an action by a jury, the Judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment, and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the Judge having caused the finding to be wrongly entered with reference to the finding of the jury upon the question or questions submitted to them. (R. Sup. C., Dec., 1876, R. 7, 1st part.)

310

Motion where judgment at trial wrong on facts found.

3. Where, at or after the trial of an action before a Judge, the Judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

311

Motion where judgment is wrong on finding entered.

(a) An application under this Rule may be to a Divisional Court of the High Court or to the Court of Appeal. (R. Sup. C., Dec., 1876, R. 7, 2nd part.)

4.\* Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and there is no direction of a Court or Judge for the entry of judgment, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties, within 10 days after his right so to do has arisen, then after the expiration of such 10 days any defendant may set down the action on motion for judgment, and give notice thereof to the other parties. (Comp. R. Sup. C., Order 40, R. 7.)

312

After trial of issues of fact.

5. Where issues have been ordered to be tried, or issues or questions of fact to be determined, in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact. (*Ib.*, R. 8.)

313

After trial of some only of the issues of fact.

6. No action shall, except by leave of the Court or a Judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. (*Ib.*, R. 9.)

314

No motion after one year.

7. Upon a motion for judgment, or for a new trial, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly; or may, if it shall be of opinion that it has not sufficient materials

315

Postponement of motion by Court.

316

Summary relief on motion upon admissions in pleadings.

before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit. (*Ib.*, R. 10.)

\*8. Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, or in the examination of any other party be entitled to; and it shall not be necessary to wait for the determination of any other question between the parties; or he may so apply where the only evidence consists of documents, and such affidavits as are necessary to prove their execution or identity, without the necessity of any cross-examination; or he may so apply where infants are concerned and evidence is necessary so far only as they are concerned, for the purpose of proving facts which are not disputed. The foregoing Rules of this Order shall not apply to such applications, and any such application may be made by motion, as soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a Judge may, on any such application, give such relief, subject to such terms, if any, as such Court or Judge may think fit. (Comp. R. Sup. C., Order 40, R. 11; G. O. Chy., No. 270.)

317

Pending application turned into motion for judgment or hearing of cause.

9. Where it is made to appear to the Court or a Judge, either upon a motion for that purpose, or on the hearing of any application which may be pending before the Court or Judge, that it will be conducive to the ends of justice to permit it, the Court or Judge may direct any application to be turned into a motion for judgment, or a hearing of the cause or matter; and thereupon the Court or Judge may make such order as to the time and manner of giving the evidence in the cause or matter, and with respect to the further prosecution thereof, as the circumstances of the case may require; and upon the hearing it shall be discretionary with the Court or Judge to either pronounce a judgment or make such order as the Court or Judge deems expedient. (G. O. Chy., No. 614.)

318

Motion for judgment by leave after service of writ.

10. Where at any time after the writ of summons has been issued it is made to appear to the Court or a Judge on an *ex parte* application that it will be conducive to the ends of justice to permit a notice of motion for a judgment to be forthwith served, the Court or Judge may order the same accordingly; and when such permission is granted, the Court or Judge is to give directions, as to the service of the notice of motion and filing of the affidavits, as may be expedient.

(2) Upon the hearing of such motion the Court, instead of either granting or refusing the application, may give such directions for the examination of either parties or witnesses, or for the making of further inquiries, or with respect to the further prosecution of the suit, as the circumstances of the case may require, and upon such terms as to costs as the Court thinks right. (*See* G. O. Chy., Nos. 271, 272.)

## ORDER XXXVII.

### ENTRY OF JUDGMENT.

319

Judgment, how entered.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The forms in Appendix (I) hereto may be used for entering judgments, with such variations as circumstances may require. (Comp. R. Sup. C., Order 41, R. 1.) (*See* R. S. O., c. 50, s. 302).

2. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date. (*Ib.*, R. 2.)

**320**  
Date of entry when judgment pronounced in Court.

3. In all cases not within the last preceding Rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date. (*Ib.*, R. 3.)

**321**  
Date of entry in other cases.

4. Where under the Act or these Rules, or otherwise, it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly. (*Ib.*, R. 4.)

**322**  
Entry on affidavit, etc.

5. Where by the Act or these Rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate, sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly. (*Ib.*, R. 5.)

**323**  
Entry on order or certificate.

6.\* Any judgment of nonsuit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, accident, or otherwise, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a Judge shall seem just. (*Ib.*, R. 6; G. O. Chy., No. 184.)

**324**  
Nonsuit.

7. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion without an appeal. (R. Sup. C., Dec. 1879, R. 5.)

**325**  
Correction of mistakes in judgments and orders.

8.\* Where a sale is ordered, the master may cause the property, or a competent part thereof, to be sold either by public auction, private contract, or tender, or part by one mode and part by another, as he may think best for the interest of all parties, and he may fix an up-set price or reserved bidding, but such price or bidding must be so fixed at the meeting held by him for the purpose of settling the advertisement, and making the other arrangements preparatory to the sale, and must be notified in the conditions of sale. The master is to settle all necessary conveyances for the purpose of carrying out the sale in case the parties differ, or in case there shall be any persons under any disability (other than coverture) interested in such sale.

**326**  
General provisions where a sale is ordered.

9.\* Upon a reference under a judgment for redemption, the master is, without any special direction, to take an account of what is due to the defendant for principal money and interest, and is to tax to him his costs, and also appoint a time and place or times and places for payment according to the present practice of the court in that behalf.

**327**  
Master to take account in redemption suits.

10.\* In a redemption suit, in default of payment being made according to the report, the defendant is to be entitled on an *ex parte* application in Chambers to a final order of foreclosure against the plaintiff, or to an order dismissing the bill with costs to be paid, by the plaintiff to the defendant, forthwith after taxation thereof.

**328**  
Order on default.

11.\* In a redemption suit where the plaintiff is declared foreclosed, directions may be given either by the final order foreclosing the plaintiff, or by subsequent orders, that all neces-

**329**  
Directions where plaintiff in redemption suit is foreclosed.

sary inquiries be made, accounts taken and proceedings had for redemption or foreclosure, or redemption or sale, as against any subsequent incumbrancers, or for the adjustment of the relative rights and liabilities of the original defendants as among themselves, and such order shall have the same force and effect as a judgment obtained at the suit of the original defendant.

**330**  
Procedure where order is for redemption, &c.

12.\* Where the order is for redemption or foreclosure, or redemption or sale, such proceedings are in such case to be thereupon had, and with the same effect as in a suit for foreclosure or sale, and in such case the last incumbrancer is to be treated as the owner of the equity of redemption.

**331**  
Assignment of property and delivery of documents.

13.\* In a suit for foreclosure or sale upon payment by the defendant, or in a suit for redemption upon payment by the plaintiff, or payment of the amount found due, the plaintiff or defendant shall, unless the decree otherwise directs, assign and convey the mortgaged premises in question to the defendant, (or plaintiff, as the case may be,) making the payment, or to whom he may appoint, free and clear of all incumbrances done by him, and deliver up all deeds and writings in his custody or power relating thereto, upon oath, and in case of a corporation the affidavit shall be made by the officer thereof having the custody of such deeds and writings.

**332**  
Application of rules 8-13.

14.\* The foregoing orders, 8-13, are to apply to all cases of reference to the master in suits for foreclosure, sale or redemption. (See G. O. Chy. No. 397.)

## ORDER XXXVIII.

### EXECUTION.

**333**  
Enforcing judgment for recovery of money.

1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree, for the payment of money, of any of the Superior Courts, might have been enforced at the time of the passing of the said Act. (Comp. R. Sup. C., Order 42, R. 1.)

**334**  
For payment into Court.

2. A judgment for the payment of money into Court may be enforced by any mode by which a judgment or decree for that purpose of any such Court might have been enforced at the time of passing the said Act. (Comp. *Ib.*, R. 2.)

**335**  
For recovery of land.

3. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. (*Ib.*, R. 3.)

**336**  
For recovery of other property.

4. A judgment for the recovery of any property other than land or money may be enforced:

By writ for delivery of the property:

By writ of attachment:

By writ of sequestration. (*Ib.*, R. 4.)

**337**  
Judgment requiring person to do or leave undone.

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal. (*Ib.*, R. 5.)

**338**  
Meaning of "Writ of execution," and "issuing of execution."

6. In these Rules the term "writ of execution" shall include writs of fieri facias, capias, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the expression "issuing execution against any party" shall

mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case. (*Ib.*, R. 6.)

7. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried. (*Ib.*, R. 7.)

339

Judgment for conditional relief.

8. Where a judgment is against partners in the name of the firm, execution may issue in manner following:

340

Judgment against partners.

- (a) Against any property of the partners as such;
- (b) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner;
- (c) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. (*Ib.*, R. 8; *ante* Order 8, R. 8.)

9. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it if he do so in person. The forms in Appendix (E) hereto may be used, with such variations as circumstances may require. (*Ib.*, R. 10 as amended by R. Sup. C. June, 1876, R. 17.)

341

Præcipe for writ.

10. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same; and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or other place, and also the name of the street, and number of the house of such plaintiff's or defendant's residence, if any such there be. (Comp. R. Sup. C., Order 42, R. 11; Reg. Gen. T. T., 1856, No. 55, Ont.)

342

Indorsement of name and address.

11. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (J) hereto may be used, with such variations as circumstances may require. R. Sup. C., Order 42, R. 12.)

343

Date.

**344**  
Poundage etc.

12. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered. (*Ib.*, R. 13; *See* R.S.O., c. 66, s. 44.)

**345**  
Indorsements  
on writ.

13. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 6 per cent., per annum from the time when the judgment was entered up; provided that in cases where there is an agreement between the parties that more than 6 per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed. (Comp. R. Sup. C., Order 42, R. 14; Reg. Gen. T. T., 1856, No. 55, Ont.)

**346**  
*Fi. fa.*, how  
soon it may  
issue.

14. Every person to whom any sum of money or any costs shall be payable under a judgment, shall, immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of *ieri facias* to enforce payment thereof, subject nevertheless as follows:

(a) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.

(b) The Court or Judge at the time of giving judgment, or the Court or a Judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the period hereinbefore prescribed. (Comp. R. Sup. C., Order 42, R. 15.)

**347**  
Currency of  
writ.

15. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, be renewed by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ,—either by being marked in the margin with a memorandum signed by the proper officer who issued such writ, or by his successor in office, stating the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and having the like memorandum; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof. (Comp. *Ib.*, R. 16; R. S. O., c. 66, s. 11.)

**348**  
Proof of  
renewal.

16. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with the memorandum in the last preceding Rule mentioned, shewing the same to have been renewed, shall be sufficient *prima facie* evidence of its having been renewed. (Comp. *Ib.*, R. 17; R.S.O., c. 66, s. 12.)

**349**  
Execution  
within 6  
years.

17. As between the original parties to a judgment, execution may issue at any time within 6 years from the recovery of the judgment. (R. Sup. C., Order 42, R. 18; *See* R. S. O., c. 50, s. 322.)

**350**  
Execution  
after 6 years,  
or change of  
parties.

18. Where 6 years have elapsed since the judgment, or where any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge, if satisfied that the party so applying is entitled to issue execution, may make an order to that effect, or may order

that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise, as shall seem just. (R. Sup. C., Order 42, R. 19.)

19. Every order of the Court or a Judge, whether in an action, cause, or matter, may be enforced in the same manner as a judgment to the same effect. (*Ib.*, R. 20; See R. S. O. c. 67, s. 12.) 351  
Execution on orders.

20. In cases other than those mentioned in Rule 18, any person, not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action. (R. Sup. C., Order 42, R. 21.) 352  
In case of persons not parties.

21. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief, and upon such terms, as may be just. (*Ib.*, R. 22.) 353  
Application in lieu of *audita querela*.

22. Nothing in any of the Rules of this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever. (*Ib.*, R. 23.) 354  
Saving of existing rights.

23. Nothing in this Order shall affect the order in which writs of execution may be issued. (*Ib.*, R. 24.) 355  
Order of writs not affected.

## ORDER XXXIX.

### WRITS OF FIERI FACIAS, &C.

1. Writs of *feri facias* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed. (R. Sup. C., Order 43, R. 1.) 356  
Writs of *fi. fa.*

2. Writs of *venditioni exponas* may be issued and executed in the same cases and in the same manner as heretofore. (Comp. *Ib.*, R. 2.) 357  
Other writs.

## ORDER XL.

### ATTACHMENT OF THE PERSON.

1. A writ of attachment shall be issued under the same circumstances and in the same manner and shall have the same effect as heretofore according to the practice of the Court of Chancery. (Comp. R. Sup. C., Order 44, R. 1; R. S. O., c. 67, ss. 10, 11; G. O. Chy., Nos. 288-294.) 358  
Effect of attachment

2. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued. (R. Sup. C., Order 44, R. 2.) 359  
Leave to issue.

## ORDER XLI.

## ATTACHMENT OF DEBTS.

360  
Application  
for examina-  
tion of judg-  
ment debtor.

1. In case any party, whether plaintiff or defendant, has obtained a judgment, whatever be the cause of action for which the same was recovered, such party, or any person entitled to enforce such judgment, may apply to the Court or Judge for a rule or order that the judgment debtor shall be orally examined upon oath before a Master, or Local Master, or an Examiner, or before one of the Clerks or Deputy Clerks of the Crown, or before the Judge of the County Court of the County within which such debtor resides, or before any official referee or other person to be specially named in such rule or order, touching his estate and effects, and as to the property and means he had when the debt or liability which was the subject of the action in which judgment has been obtained against him was incurred, and as to the property and means he still has of discharging the said judgment, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him; and the Court or Judge may make such rule or order for the examination of the judgment debtor, and for the production of any books or documents. (R. S. O., c. 50, s. 304; See also c. 49, s. 17; R. Sup. C., Order 45.)

361  
Application  
for examina-  
tion of officers  
of corpora-  
tions.

2.\* In case the judgment is against the body corporate, the person entitled to enforce the judgment may apply to the Court or Judge for a rule or order, that any one or more of the officers of such body corporate, (to be named in such rule or order) shall be orally examined upon oath, before such Judge of the County Court, officer, or other person referred to in the next preceding rule, (and to be named in such rule or order), touching the names and residences of the stockholders in said body corporate, the amount and particulars of stock held or owned by each stockholder, and the amount paid thereon; also as to any and what debts are owing to the said body corporate; and as to the estate and effects of the body corporate; and as to the disposal made by the body corporate of any property since contracting the debt or liability, in respect of which the said judgment was obtained, and the court or judge may make such order for the examination of such officer or officers, and the production by him or them of any books or documents as may seem fit; and in case any such officer does not attend, as required by the said rule or order, and does not shew a sufficient excuse for not attending, or if attending he refuses to disclose any of the matters in respect of which he may be examined, such Court or Judge may order such officer to be committed to the common goal of the county in which he resides, for any term not exceeding 6 months. (See R. S. O., c. 49, s. 19.)

362  
Court or Judge  
may order at-  
tachment of  
debts.

2.\* The Court or a Judge may, upon the *ex parte* application of the judgment creditor, or the person entitled to enforce the judgment, either before or after the oral examination, mentioned in the preceding two rules, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within Ontario, order that all debts owing or accruing from such third

person (hereinafter called the garnishee) to the judgment debtor, shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to shew cause why he should not pay the judgment creditor, or the person entitled to enforce the judgment, the debt due from such garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt. (R. Sup. C., Order 45, R. 2; comp. R. S. O. c. 50, s. 307.)

Order that garnishee appear.

363

3. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the Court or Judge shall direct, shall bind such debts in his hands. (R. Sup. C., Order 45, R. 3; comp. R. S. O. c. 50, s. 308.)

Order for attachment to bind debts.

364

4. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt. (R. Sup. C., Order 45, R. 4; comp. R. S. O. c. 50, s. 309.)

Order for execution against garnishee.

365

5. If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined. (R. Sup. C., Order 45, R. 5; comp. R. S. O. c. 50, s. 310.)

Issue where garnishee disputes liability.

366

6. Where in proceeding to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear and state the nature and particulars of his claim upon such debt. (R. Sup. C., Order 45, R. 6; comp. R. S. O. c. 50, s. 313.)

Order for third person to appear.

367

7. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or may order any issue or question to be tried or determined according to the preceding Rules of this Order, and may bar the claim of such third person, or may make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable. (R. Sup. C., Order 45, R. 7; comp. R. S. O., c. 50, s. 313, sub-s. 2.)

Proceedings as to claims of third persons.

368

8. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceedings may be set aside or the judgment reversed. (R. Sup. C., Order 45, R. 8; comp. R. S. O., c. 50, s. 317.)

Garnishee discharged by payment.

369  
Attachment  
book to be kept  
by proper  
officer.

9. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer. (R. Sup. C., Order 45, R. 9; comp. R. S. O., c. 50, s. 320.)

370  
Costs of  
application.

10. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, including the examination of the debtor, shall be in the discretion of the Court or a Judge. (R. Sup. C., Order 45, R. 10; comp. R. S. O., c. 50, s. 321.)

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## ORDER XLII.

### WRIT OF POSSESSION (LANDS).

371  
Writ to recover  
possession  
of land.

1. A judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the Superior Courts of Common Law. (R. Sup. C., Order 48, R. 1; See G. O. Chy., No. 294.)

372  
Writ may issue  
on filing affi-  
davit.

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person on, or at any specified time after, being served with the judgment, the person prosecuting such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit shewing due service of such judgment and that the same has not been obeyed. (R. Sup. C., Order 48, R. 2.)

373  
Effect of writ.

3. \*A writ of possession shall have the effect of a writ of assistance as well as of a writ of *habere facias possessionem*.

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## ORDER XLIII.

### WRIT OF DELIVERY (CHATTELS).

374  
How issued  
and enforced.

A writ for delivery of any property other than land or money may be issued and enforced in the manner heretofore in use in actions of detinue in the Superior Courts of Common Law. (R. Sup. C., Order 49.)

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## ORDER XLIV.

### CHANGE OF PARTIES BY DEATH, &C.

375  
Action not to  
abate by reason  
of marriage etc.

(Comp. R. S. O., c. 50, ss. 228-242; G. O. Chy., Nos. 337-341.)  
1. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*. (R. Sup. C., Order 50, R. 1; See R. S. O., c. 50, s. 228.)

2. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the action may be continued by or against the person to or upon whom such estate or title has come or devolved. (R. Sup. C., Order 50, R. 3; *See* G. O. Chy., No. 337; R. S. O., c. 50, s. 229.)

376  
Assignment  
*pendente lite*.

3. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action and such new party, may be obtained on *præcipe*, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence. (Comp. R. Sup. C., Order 50, R. 4; R. S. O., c. 38, s. 40; Imp. Act 15 and 16 Vic., c. 86, s. 52; G. O. Chy., No. 537.)

377  
Order to add  
parties on  
change of  
interest how  
obtained.

4. An order so obtained shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties to the action or their solicitors, and also upon each such new party (unless the person making the application be himself the only new party), and the order shall from the time of such service, subject nevertheless to the next 5 following Rules, be binding on the persons served therewith. (Comp. R. Sup. C., Order 50, R. 5; G. O. Chy., No. 338.)

378  
Service of  
order.

5. Where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture, has a guardian *ad litem* in the action, shall be served with such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within 12 days from the service thereof. (R. Sup. C., Order 50, R. 6; G. O. Chy., No. 339.)

379  
Application to  
discharge  
order.

6. Upon every copy of such order served, there shall be indorsed a memorandum in the form or to the effect set forth in Form 19 in Appendix (B) hereto. (*See* G. O. Chy., No. 341.)

380  
Indorsement  
on order.

7. Where any person being under any disability other than coverture, and not having had a guardian *ad litem* appointed in the action, is served with any such order, such person may apply to the Court or a Judge to discharge or vary such order, at any time within 12 days from the appointment of a guardian *ad litem* for such party, and until such period of 12 days shall have expired such order shall have no force or effect as against such last mentioned person. (R. Sup. C., Order 50, R. 7; G. O. Chy., No. 340.)

381  
Application to  
discharge or-  
der by persons  
under disa-  
bility

8. Where the order is served out of Ontario, the party served is to have the same time to apply to discharge the order, as a defendant has to appear to a writ of summons so served; but an application may be made for shortening the time. (Comp. G. O. Chy., No. 342.)

382  
Application to  
discharge  
order when  
served out of  
Ontario.

9. Where the Court or a Judge authorizes publication instead of service, the Court or Judge is at the same time to appoint such time for applying to discharge the order as seems proper. (Comp. G. O. Chy., No. 343.)

383  
Application in  
case of order  
allowing ser-  
vice by publi-  
cation.

## ORDER XLV.

## TRANSFERS AND CONSOLIDATION OF ACTIONS.

384  
Transfer by  
order.

1. Actions may be transferred from one Division of the High Court to another Division by order of the Presidents of such Divisions. (*See R. Sup. C., Order 51, R. 2.*)

385  
Presidents of  
Divisions to  
make transfers  
necessary to  
equalize busi-  
ness.

2. The Presidents of the Queen's Bench, Chancery and Common Pleas Divisions shall, from time to time as occasion may require, meet together and examine the list of motions, rules and other matters set down for argument in each Divisional Court of the High Court, and direct the transfer of such and so many of the said motions, rules and other matters from one Divisional Court to another as shall, as nearly as possible by their judgment, equalize the amount of business to be done in the said Courts. (*See 41 Vic., c. 8, s. 4, Ont.*)

386  
Transfer under  
administration  
order.

3. Where an order has been made for the administration of the assets of any testator or intestate, a Judge of any Division shall have power, without any further consent, to order the transfer to such Division of any action pending in any other Division by or against the executors or administrators of the testator or intestate whose assets are being so administered. (*R. Sup. C., June, 1876, R. 18.*)

387  
Consolidation  
of actions.

4. Actions in any Division or Divisions may be consolidated by order of the Court or a Judge in the manner heretofore in use in the Superior Courts of Common Law. (*R. Sup. C., Order 51, R. 4.*)

## ORDER XLVI.

## INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS, OR INTERIM PRESERVATION OF PROPERTY, &amp;C.

388  
Order for in-  
terim pres-  
ervation of  
property.

1. Where by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured. (*R. Sup. C., Order 52, R. 1.*)

389  
Sale of  
perishable  
goods.

2. It shall be lawful for the Court or a Judge, on the application of any party to an action, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once. (*Ib., R. 2.*)

390  
Order for  
detention and  
inspection of  
property.

3. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action; and for all or any of the purposes aforesaid to authorize any person or persons to enter upon or into any land or building in the possession of any party to such action; and for all or any of the purposes aforesaid to authorize any samples to be

taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. (*Ib.*, R. 3.)

4. An application for an order under section 19, sub-section 8, of the Act, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section 8, it may be made either *ex parte* or on notice, and if for an order under the said Rules 2 or 3 of this Order, it may be made, after notice to the defendant, at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance, by the party making the application. (*Ib.*, R. 4.)

391  
Application  
under rules  
2 & 3.

5. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings, or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge. (*Ib.*, R. 5.)

392  
Application  
under rule 1.

6. No writ of injunction shall be issued in any case. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction now has. (R. Sup. C., April, 1880, R. 32.)

393  
Writ of in-  
junction  
abolished.

7. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter-claim to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge, at any time after such last mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, may order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it. (R. Sup. C., Order 52, R. 6.)

394  
Amount of  
lien claimed  
may be paid  
into Court,  
and property  
delivered up.

8. Where the trusts of any will or settlement are being administered, and a sale is ordered of any property vested in the trustees of such will or settlement upon trust for sale or with power of sale by such trustees, the conduct of such sale shall be given to such trustees, unless the Judge shall otherwise direct. (R. Sup. C., March, 1879, R. 7.)

395  
Conduct of  
sale under  
trusts of will  
or settlement.

## ORDER XLVII.

### MOTIONS AND OTHER APPLICATIONS.

1. Where by these Rules any application is authorized to be made to the Court or a Judge in an action, such application shall be made by motion. (R. Sup. C., Order 53, R. 1.)

396  
Application to  
Court or Judge  
in Court to be  
by motion.

2. No rule or order to shew cause shall be granted in any action or matter, except in the cases in which an application for such rule or order is expressly authorized by these Rules. (*Comp. Ib.*, R. 2.)

397  
No rule or  
order nisi  
except when  
authorized.

- 398  
Notice of motion when orders *ex parte* can be made.
3. Except where (by the practice existing at the time of the passing of the said Act) any order or rule has heretofore been made *ex parte* absolute in the first instance, and except where by these Rules it is otherwise provided, and except where the motion is for a rule or summons to shew cause only—no motion shall be made without previous notice to the parties affected thereby. But the Court or Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte*, upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside. (*Ib.*, R. 3.)
- 399  
2 clear days' notice.
4. Unless the Court or Judge give special leave to the contrary, there must be at least 2 clear days between the service of a notice of motion and the day named in the notice for hearing the motion. (*Ib.*, R. 4.)
- 400  
All proper parties not served.
5. If on the hearing of a motion or other application, the Court or Judge shall be of opinion that any person to whom notice has not been given ought to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose. (*Ib.*, R. 5.)
- 401  
Adjournment.
6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit. (*Ib.*, R. 6.)
- 402  
Service before appearance.
7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose. (Comp. *Ib.*, R. 7.)
- 403  
Service with writ or before time for appearance.
- 8.\* The plaintiff may also, without any special leave, serve a notice of motion for an injunction, and may, by leave of the Court or a Judge to be obtained *ex parte*, serve any other notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant. (Comp. *Ib.*, R. 8.)

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### ORDER XLVIII.

#### APPLICATIONS AT CHAMBERS.

- 404  
Applications to be made in a summary way.
1. Every application at chambers in Toronto authorized by these Rules shall be made in a summary way, on notice instead of by summons. (Comp. R. Sup. C., Order 54, R. 1.)
- 405  
Form of order.
2. An order shall be in the Form No. 2 in Appendix (G) hereto, with such variations as circumstances require. It shall be marked with the name of the Judge or officer by whom it is made. (R. Sup. C., April 1880, R. 39.)
- 406  
Manner and time of appealing therefrom.
3. Every appeal to the Court from any decision at chambers shall be by motion, and shall be made within 8 days after the decision appealed against, or if no Court to which such appeal can be made shall sit within such 8 days, then on the first day on which any such Court may be sitting after the expiration of such 8 days. (Comp. R. Sup. C., Order 54, R. 6, amended by R. Sup. C., March, 1879, R. 8.)

## ORDER XLIX.

## OFFICES AND OFFICERS.

1.\* All the officers of the Supreme Court shall be auxiliary to one another for promoting the correct, convenient, and speedy administration of business. 407  
Officers to be  
auxiliary to  
one another.

2.\* Two of the officers of the High Court shall, in addition to their other duties, be judgment clerks of the High Court, for the purpose of settling the form and terms of such special judgments as may be referred to them for that purpose by any Divisional Court, or a Judge of any Division, or by the Master in Chambers. 408  
Judgment  
Clerks.

3.\* Where the offices of Deputy Clerk of the Crown and Deputy Registrar in any county are not held by the same person, the Deputy Clerk of the Crown shall in actions in the Queen's Bench and Common Pleas Divisions have the powers and duties of a Deputy Registrar (not local Master), in addition to the powers and duties heretofore belonging to a Deputy Clerk of the Crown; and the Deputy Registrar shall in actions in the Chancery Division have the powers and duties of a Deputy Clerk of the Crown, in addition to the powers and duties heretofore belonging to a Deputy Registrar. Where the two offices are united in the same person he shall be styled *Local Registrar of the High Court*; and every reference in these Orders to the said two offices, or either of them, shall be deemed to apply to the Local Registrar. (See G. O. Chy., Nos. 33, 34, 35, 37, 38, 39, 73, &c.) 409  
Deputy Clerks  
of the Crown  
and Deputy  
Registrars.

4. Subject to the foregoing Orders, where an action is commenced in the office of a Deputy Registrar or Deputy Clerk of the Crown or Local Registrar, all such orders in the action as require to be entered (except orders made by the County Court Judge or the local Master of the county under the authority and jurisdiction vested in them under these Rules) shall be entered at Toronto; and, where necessary, an office copy of the order so entered shall be transmitted or delivered to the Deputy Registrar, Deputy Clerk of the Crown or Local Registrar to be filed with the proceedings in the action. (See R. Sup. C., Order 35, Rule 2.) 410  
Entry of  
orders.

5. Sections 302 and 303 of the Common Law Procedure Act and section 7 of the "Execution Act" shall apply as nearly as may be to Deputy Registrars as well as Deputy Clerks of the Crown. (See R. Sup. C., Order 35, R. 3; R. S. O., c. 50, ss. 12, 302, 303; c. 66, s. 7.) 411  
Entry of judg-  
ment and issue  
of execution by  
Deputy Re-  
gistrars.

6.\* There shall be an officer of the Supreme Court to be named the Master in Chambers, who, in regard to all actions and matters in the High Court, shall have the power, authority and jurisdiction heretofore in like cases possessed in the Superior Courts respectively, by the Clerk of the Crown and Pleas of the Court of Queen's Bench and by the Referee in Chambers of the Court of Chancery; 412  
Master in  
Chambers.

(a) The said officer shall not have authority or jurisdiction in respect of the matters excepted in regard to the Clerk of the Crown and Pleas of the Queen's Bench by the Rules of the Judges of the Courts of Queen's Bench and Common Pleas of Hilary Term, 1870, or in respect of the matters excepted in regard to the Referee by the 560th of the orders of the Court of Chancery. (See R. Sup. C., Order 54, R. 2.)

413

Official referee may sit in chambers for master.

7.\* Any official Referee, upon the request of the Master in Chambers or of a Judge of the High Court, may sit with or for such Master, and while sitting for him shall have all the authority and power of such Master. (R. S. O. c. 38, s. 9.)

414

Authority of County Court Judges.

8.\* In actions in the Queen's Bench and Common Pleas, Divisions; the County Court Judge of the County in which an action is brought shall, from and after the *first day of January, 1882*, have the same power and authority in the action as the Master in Chambers aforesaid, save and except that the authority of such County Court Judges shall not extend to granting leave for service out of Ontario, or to allowing service out of Ontario, of a writ of summons or of notice of a writ of summons. (See R. Sup. C., June 1876, R. 19; R. S. O., c. 50, s. 148; *ante* s. 71 of Act.)

(a) Such power and authority shall not apply to any action in which the writ is issued in the County of York, or (except by consent) to any action wherein the solicitors for all parties do not reside or have not offices in the county town of the county in which the action is brought, or wherein any party who has no solicitor does not reside in, or has not a place of business in, the county or union of counties. Such consent by a solicitor may be general by a memorandum in writing filed in the office of the Deputy Registrar or Deputy Clerk of the Crown, or may be confined to any particular action or application and be manifested as in the case of any other consent by a solicitor in a cause or matter. (See R. S. O., c. 50, s. 148, sub-s. 2.)

415

Authority of local Master in certain cases.

9. Where the local Master is not also Local Registrar, Deputy Registrar or Deputy Clerk of the Crown, and does not practise as a barrister or solicitor, and has not taken out a certificate so to practise, he shall, from and after the said *first day of January, 1882*, in regard to actions brought in his county have, in addition to his powers as a local Master, the like jurisdiction, power, and authority as the County Court Judge. (See R. Sup. C. Order 35, R. 4; *Ib.*, Order 54, R. 2; *Ib.*, June 1876, R. 19; R. S. O., c. 40, s. 8; c. 49, ss. 26, 27; G. O. Chy., Nos. 34 to 38.)

416

Payment out of Court.

10. \* But no money shall be distributed or paid out for costs or otherwise, without the order of a Divisional Court, or of a Judge of the High Court in court or chambers, (except money paid into court by a defendant by way of satisfaction or amends, and not belonging in whole or in part to an infant or *feme covert*;) and on the application for such order, the Court or Judge may review, amend or refer back to the master his report or order, or make such other order as the Court or Judge deems proper. (See S. O. Chy., No. 639.)

417

Manner of application.

11. Every application to a County Court Judge, or local Master under the Act or these Rules shall be made in a summary way by summons: (See R. Sup. C., Order 35, R. 5.)

(a) A summons shall be in the form No. 105 in Appendix (G) hereto, with such variations as circumstances require. It shall be addressed to all the persons on whom it is to be served. (See R. Sup. C., April, 1880, R. 34.)

(b) A summons shall be prepared by the applicant or his solicitor, and shall be signed by the proper officer and when so signed shall be deemed to be issued. The person obtaining a summons shall leave a copy thereof with the officer signing the same. (See R. Sup. C., April, 1880, R. 35.)

12. If any matter appears to the County Court Judge, Master in Chambers or local Master to be proper for the decision of a Judge of the High Court, he may refer the same to such Judge; and such Judge of the High Court may either dispose of the matter or refer the same back to the County Court Judge or officer aforesaid, with such directions as such Judge of the High Court may think fit. (See R. Sup. C., Order 35, R. 6; R. Sup. C., Order 54, Rule 3; Reg. Gen. Hil., T. 1870.)

418  
Power to refer to Judge of High Court.

13. Any person affected by any order or decision of the County Judge or officer aforesaid may appeal therefrom to a Judge of the High Court at Chambers.

419  
Appeal.

(a) Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the Judge or officer aforesaid had jurisdiction only by consent.

(b) The appeal shall be by motion, on notice served within 4 days after the decision complained of; or within such further time as may be allowed by a Judge of the High Court or by the County Court Judge or officer aforesaid whose decision is complained of.

(c) \* The motion shall be made within 8 days after the decision has been made which is appealed against or within such further time as may be allowed as aforesaid.

(See R. Sup. C., Order 35, R. 7; R. Sup. C., Order 54, R. 4-6; Reg. Gen. Hil., T. 1870.)

(d) The appeal shall be no stay of proceedings unless so ordered by a Judge of the High Court or by the Judge or officer whose decision is complained of. (See R. Sup. C., Order 35, R. 8; *Ib.*, Order 54, R. 5.)

ORDER L.

COSTS.

1. Subject to the provisions of the Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity: Provided, that where any action or issue is tried by a jury, the costs shall follow the event, unless, upon application made at the trial, for good cause shewn, the Judge before whom such action or issue is tried or the Court shall otherwise order. (R. Sup. C., Order 55, R. 1.)

420  
To be in discretion of Court.

421  
Saving as to trustee, etc.

422  
Of issues tried before jury.

2. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such time or times and in such manner and form, as the Court or a Judge shall direct. (R. Sup. C., February, 1876, R. 7; G. O. Chy., No. 321; R. S. O., c. 40, s. 97.)

423  
Amount of security for costs.

3. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge otherwise directs, be given to the party or persons requiring the security, and not to an officer

424  
Security for costs where given by bond.

- of the Court. (*See* R. Sup. C., April, 1880, R. 41; Court of Appeal Orders, March, 1878, No. 2, Ont.; G. O. Chy., No. 321.)
- 425  
Stamps. 4. The fees to be paid in stamps in the several Divisions of the High Court shall be the fees now so payable on similar proceedings in the Courts of Queen's Bench and Common Pleas. (*See* R. S. O., c. 21, s. 16; c. 40, s. 105; Reg. Gen. T. T. 1856, Sch. B, Ont.)
- 426  
Copies of documents in possession of another party. 5. As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 10 cents per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof. (R. Sup. C., of Aug. 12, 1875 "Costs," R. 16.)
- 427  
Tender of costs, on service of petition. 6. Where a petition in any cause or matter is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be \$5. The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. (*Comp. Ib.*, R. 17.)
- 428  
Disallowance of costs of unnecessary proceedings. 7. The Court or Judge may, at the hearing of any cause or matter, or upon any application or procedure in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit, evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed; or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof, as he shall find to be improper, unnecessary, or to contain unnecessary matter, or to be of unnecessary length. In such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so. (*Ib.*, R. 18.)
- 429  
Set-off of costs. 8. In any case in which, under the preceding Rule No. 8, or any other rule of Court, or by order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the

same manner as costs ordered to be paid may be recovered. (*Ib.*, R. 19.)

9. Where any party appears upon any application or proceeding in Court or at Chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance, unless the Court or Judge shall expressly direct such costs to be allowed. (*Ib.*, R. 21.)

430

Unnecessary appearance at Chambers.

10.\*There shall be two or more taxing officers of the Supreme Court; and they and each of them shall for the purpose of any proceeding before them or him, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform (subject to the supervision of the clerk of the Crown and Pleas of the Common Pleas Division) all such duties as have heretofore been performed by the Registrar of the Court of Appeal or by any of the Masters, Taxing Officers, Registrars, Deputy Registrars, or other officers of any of the Courts whose jurisdiction is by the Act vested in the High Court of Justice or Court of Appeal; and shall, in respect thereof, have such powers and authorities as previous to the commencement of the Act were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor; and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge. (*Ib.*, R. 23.)

431

General powers of taxing officers.

11. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested. (*Ib.*, R. 24.)

432

Parties to attend taxations.

12. Where any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect. (*Ib.*, R. 25.)

433

Neglect to bring in or tax costs.

13. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party. (*Ib.*, R. 26.)

434

Taxations between party and party.

14. Where a solicitor's bill of fees, charges and disbursements as delivered to a client or other person is referred to the Master to be taxed, the solicitor is to give credit for all sums of money by him received from or on account of the said client, and is to refund what, if anything, he may on such taxation appear to have been overpaid.

435

Particulars of orders for taxation.

And the Master is to tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the cost of the reference, to be paid according to the event of the taxation pursuant to the statute.

And the solicitor is not to commence or prosecute any action or suit touching the demand pending the reference.

And upon payment by the said client or other person of what (if anything) may appear to be due to the solicitor, the solicitor (if required) is to deliver to the said client or other person, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client.

The order shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variations therefrom, and any other directions which the Court or Judge shall see fit to make.

436  
Application of  
former rules,  
orders and  
practice.

15. The rules, orders, and practice of any Court, whose jurisdiction is vested in the High Court of Justice or Court of Appeal, relating to costs, and to the allowance of the fees of solicitors and attorneys, and to the taxation of costs, existing prior to the commencement of the Act, shall, in so far as they are not inconsistent with the Act and the Rules of Court in pursuance thereof, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal. (Comp. *Ib.*, R. 28 ; R. S. O., c. 50, s. 334.)

437  
Objection to  
taxation.

16. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items, or parts or part thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same. (R. Sup. C., Aug, 1875 ; R. 30.)

438  
Review of  
taxation by  
taxing officer.

17. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto. (*Ib.*, R. 31.)

439  
Review of  
taxation by  
judge.

18. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may apply to a Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as to the Judge may seem just ; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid. (*Ib.*, R. 32.)

440  
Evidence  
thereon.

19. Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received

upon the hearing thereof unless the Judge shall otherwise direct. (*Ib.*, R. 33.)

## ORDER LI.

### NOTICES AND PAPER, &C.

1. All notices required by these Rules shall be in manuscript or print, or partly in manuscript and partly in print, unless expressly authorized by a Court or Judge to be given orally. (Comp. R. Sup. C., Order 56, R. 1.)

441  
Notices to be written or printed.

2. Proceedings, if printed, shall be printed with pica type, leaded, on good paper, of foolscap size. (Comp. *Ib.*, R. 2; G. O. Chy., No. 67.)

442  
Regulations as to printing proceedings.

3. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript. (R. Sup. C., Order 56, R. 3.)

443  
Affidavits.

## ORDER LII.

### TIME.

1. Where by these Rules, or by any judgment or order given or made after the commencement of the Act, time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months. (R. Sup. C., Order 57, R. 1.)

444  
Months shall mean calendar months.

2.\* Where any limited time less than 6 days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, holidays, as defined by the Interpretation Act, shall not be reckoned in the computation of such limited time. (*Ib.*, R. 2; R. S. O., c. 1, s. 8, sub-s. 16; Reg. Gen., T. T. 1856, No. 146, Ont.)

445  
Period of less than 6 days.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open. (*Ib.*, R. 3.)

446  
Where last day is Sunday.

4. The time for delivering or amending any pleading may be enlarged by consent in writing, without application to the Court or a Judge. (R. Sup. C., April, 1880, R. 42.)

447  
Enlargement of time by consent.

5. Service of pleadings, notices, summonses, orders, rules and other proceedings shall be effected before the hour of 5 in the afternoon, except on Saturdays, when it shall be effected before the hour of 2 in the afternoon. Service effected after 5 in the afternoon on any week day except Saturday shall be deemed to have been effected on the following day. Service effected after 2 in the afternoon on Saturday shall be deemed to have been effected on the following Monday. (R. Sup. C., April 1880, R. 43; Reg. Gen., T. T. 1856, No. 135, Ont.; G. O. Chy., Nos. 410, 411.)

448  
Service.

6.\* No pleadings shall be amended or delivered in the long vacation, except by consent or unless directed by the Court or a Judge. (R. Sup. C., Order 57, R. 4; R. S. O., c. 50, s. 95.)

449  
Pleading in vacation.

- 450 Long vacation excluded in time for pleading. 7. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, or in the times allowed for other purposes for which the same is not reckoned by the practice of the Courts consolidated by the Act, or any or either of them, or for the like proceedings substituted by the Act, or these Rules; unless otherwise directed by a Court or a Judge. (*See R. Sup. C., Order 57, R. 5; G. O. Chy., No. 408; R. S. O., c. 50, s. 95.*)
- 451 Enlargement or abridgment of time. 8. A Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. (*R. Sup. C., Order 57, R. 6.*)
- 452 Costs of application for extension of time. 9. The costs of an application to extend the time for taking any proceeding shall, in the absence of an order by the Court or a Judge directing by whom they are to be paid, be in the discretion of the taxing master. (*R. Sup. C., April, 1880, R. 65.*)

## ORDER LIII.

## AFFIDAVITS.

- 453 Form of affidavits. 1. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule. (*R. Sup. C., April 1880, R. 12; Reg. Gen. T. T. 1856, No. 112, Ont.; G. O. Chy., Nos. 68, 258.*)
- 454 Description and address of deponent to be stated. 2. Every affidavit shall state the description and true place of abode of the deponent. (*R. Sup. C., April 1880, R. 13; Reg. Gen., T. T. 1856, No. 109, Ont.*)
- 455 Affidavits made by two or more deponents. 3. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents. (*R. Sup. C., April, 1880, R. 14; Reg. Gen., T. T. 1856, No. 110, Ont.*)
- 456 Affidavit to be filed. 4. There shall be appended to or indorsed upon every affidavit a note shewing on whose behalf it is filed. (*Comp. R. Sup. C., April, 1880, R. 15.*)
- 457 Alterations in affidavits. 5. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall without leave of the Court or a Judge be read or made use of in any matter pending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit; nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten, and signed or initialed in the margin of the affidavit by the officer taking it. (*R. Sup. C., April, 1880, R. 16; Reg. Gen., T. T. 1856, No. 111, Ont.; G. O. Chy., No. 131.*)

6. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent. (R. Sup. C., April 1880. R. 17; Reg. Gen., T. T. 1856, No. 113, Ont.)

458  
Affidavits by  
illiterate  
persons.

7. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used, be delivered to and left with the proper officer in Court or in Chambers. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed in the proper office, and the copy duly authenticated with the seal of that office. (R. Sup. C., April 1880, R. 18.)

459  
Stamps on  
affidavits.

Use of office  
copies.

## ORDER LIV.

### DIVISIONAL AND OTHER COURTS.

1. The following proceedings and matters shall be heard and determined before the Divisional Courts; but nothing herein contained shall be construed so as to take away or limit the power of a single Judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein, heretofore taken before a single Judge to be taken before a Divisional Court:

460  
Proceedings to  
be taken be-  
fore Division-  
al Courts.

Appeals from orders of a Judge in Chambers.

Proceedings directed by any Statute to be taken before the Court, and in which the decision of the Court is final.

Cases of Habeas Corpus, in which a Judge directs that a rule nisi for the writ, or the writ, be made returnable before a Divisional Court.

Other cases where all parties agree that the same be heard before a Divisional Court.

Applications for new trials in the said Divisions where the action has been tried with a jury. (Comp. R. Sup. C., December, 1876, R. 8.)

2. Appeals from all judgments of a single Judge sitting in Court may be made to a Divisional Court, or may be made to the Court of Appeal in the first instance, subject to the provisions of the Act as to Appeals.

461  
Appeal from  
single Judge  
in Court.

3. Bills of exceptions and proceedings in error shall be abolished. (See R. Sup. C., Order 58, R. 1.)

462  
Bill of  
exceptions and  
error  
abolished.

## ORDER LV.

## EFFECT OF NON-COMPLIANCE AND ERRORS.

463  
Non-compliance with Rules.

1. Non-compliance with any of these Rules shall not render the proceedings in any action void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit. (R. Sup. C., Order 59.)

464  
Amendment of defects or errors.

2. The Court or a Judge may at any time, and on such terms as to costs or otherwise as to the Court or Judge may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the advancement of justice, determining the real question or issue raised by or depending on the proceedings, and best calculated to secure the giving of judgment according to the very right and justice of the case. (See R. Sup. C., April, 1880, R. 44; R. S. O., c. 49, ss. 7, 8; c. 50, s. 270.)

## ORDER LVI.

## ACCOUNTANT'S OFFICE.

465  
Suitors' Accounts in Superior Courts consolidated.

1.\* The Suitors' Accounts in the Queen's Bench Common Pleas and Chancery shall be consolidated, and shall be in charge of an officer to be called the Accountant of the Supreme Court.

466  
R. S. O. c. 50, s. 121, to apply to accounts.

2. Section 121 of the Common Law Procedure Act shall apply to the said accounts, and shall be read as if the words "Accountant of the Supreme Court" were substituted for the word "clerk" wherever the word "clerk" occurs in the said section.

467  
Payment out of Court.

3.\* Money is to be paid out of Court upon the cheque of the Accountant, countersigned by any of the following officers, viz.: one of the Clerks of the Crown and Pleas or the Registrar. (R. S. O., c. 50, s. 121; G. O. Chy., No. 627.)

468  
Cheques to be initialed by Clerk.

4. Every cheque is to be initialed by the chief Clerk in the Accountant's office before the same is presented for the signature of the Accountant or other officer. (See G. O. Chy., Nos. 352, 372, 627.)

469  
Registrar to act as Accountant.

5. The Registrar of the Court of Chancery shall act as Accountant of the Supreme Court until and unless some other person is appointed Accountant of the Supreme Court.

## ORDER LVII.

## SITTINGS AND VACATIONS.

470  
Sittings of High Court

1. The sittings of the High Court of Justice shall be three in every year, viz., the Michaelmas sittings, the Hilary sittings, and the Easter sittings.

(a) The Michaelmas sittings shall begin on the third Monday in November, and end on the Saturday of the second week thereafter; the Hilary sittings shall begin on the first Monday in

February and end on the Saturday of the following week; the Easter sittings shall begin on the third Monday in May and end on the Saturday of the second week thereafter. (*See R. S. O., c. 39, s. 11; R. Sup. C., Order 61, R. 1.*)

(*b*) In case it appears to the Judges of the said Court, or a majority of them, that the number of days so provided for holding any sittings is not required, or is insufficient, for the due despatch of the business to be transacted by the Court in such sittings, such Judges may from time to time, by rule or order, shorten the period for holding the sittings to such period, not less than two weeks, or increase the length of the same to any period, as the case may require. (*See R. S. O., c. 39, s. 12.*)

(*c*) \* The preceding provisions of this Order are not to apply to the Chancery Division except when the Judges thereof shall be of opinion that the business of the said Division is such as to render the said provisions necessary or convenient for the due despatch of business, and shall give notice to that effect.

(*d*) \* Divisional Courts of the High Court are to sit at such further or other times as may be directed by the High Court or as may be necessary for the due despatch of business.

2. \* One or more of the Judges of the High Court shall be selected at the commencement of each Long Vacation, for the hearing in Toronto during vacation of all such applications as may require to be immediately or promptly heard. Such Judge or Judges shall act as vacation Judge or Judges for one year from appointment. In the absence of arrangement between the Judges, the vacation Judge or Judges shall be the Judge or Judges last appointed (whether as Judge or Judges of the said High Court or of any Court whose jurisdiction is by the Act vested in the said High Court) who have not already served as vacation Judges of any such Court; and if there shall not be any Judge or Judges for the time being of the said High Court who shall not have so served, then the vacation Judge or Judges shall be the Judge or Judges (if any) who has or have not so served and the senior Judge or Judges who has or have so served once only according to seniority of appointment whether in the said High Court or such other Court as aforesaid. (*Comp. R. Sup. C., Feb., 1876, R. 9.*)

471  
Vacation  
Judges.

3. The vacation Judges may sit either separately, or together as a Divisional Court, as occasion shall require, and may hear and dispose of all actions, matters, and other business to which ever Division the same may be assigned. No order made by a vacation Judge shall be reversed or varied except by a Divisional Court or the Court of Appeal, or the Judge who made the order. Any other Judge of the High Court may sit in vacation for any vacation Judge. (*R. Sup. C., Order 61, R. 6.*)

472  
Jurisdiction of  
vacation  
Judges.

4. The vacation Judges of the High Court may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any Division of the High Court to which such business may be assigned, although such interval may not be called or known as a vacation. (*Ib., R. 7.*)

473  
Power of va-  
cation Judges  
during inter-  
vals between  
sittings.

## ORDER LVIII.

## EXCEPTIONS FROM THE RULES.

474  
Certain mat-  
ters not affect-  
ed.

Nothing in these Rules shall be construed as intended to affect the practice or procedure in criminal proceedings, or proceedings on the Crown or Revenue side of the Queen's Bench or Common Pleas Divisions. (*See* R. Sup. C., Order 62; R. S. O., c. 39, s. 4.)

## ORDER LIX.

## INTERPRETATION.

475  
"Judge"  
meaning of.

A "Judge" in the preceding Orders means a Judge of the Supreme Court, or a Judge having the authority for the time being of a Judge of the High Court, unless there is something in the context indicating a different meaning.

## ORDER LX.

## PENDING BUSINESS.

476  
In Queen's  
Bench and  
Common  
Pleas  
Divisions.

1. With respect to pending business in the Queen's Bench and Common Pleas Divisions, the procedure is to be as follows:—  
(1) Where no declaration has been delivered, the action shall be continued according to the ordinary course of the High Court of Justice, as if it had been commenced in that Court. (2) In all other cases the action shall be continued up to the close of the pleadings according to the practice of the Court in which it was brought, and afterwards according to the provisions of the Act; subject, however, to an order, at the instance of either party, to proceed at any stage according to the provisions of the Act. (*See* Notice of Nov. 2, 1875, W. N. 1875, Pt. II., p. 469.)

477  
In Chancery  
Division.

2. With respect to pending business in the Court of Chancery, subject to any special order which may be made in any cause, matter or proceeding pending at the commencement of the Act, the procedure is to be as follows:—All causes, matters, and proceedings, except causes in which neither notice of motion for a decree has been served, nor replication been filed, before the said time shall, so far as relates to the form and manner of procedure, be continued and concluded in the same manner as they would have been in the Court of Chancery. (*See* Notice of Nov. 3, 1875, W. N. 1875, Pt. II., p. 468.)

(a) All such pending causes in which, up to the commencement of the Act, no notice of motion for a decree has been served or replication filed, shall be continued in the same manner as they would have been continued in the Court of Chancery up to the time at which such notice of motion or replication could have been served or filed, and shall from that period be continued according to the ordinary course of the High Court of Justice. (*See* *Ib.*)

(b) Any party to a pending cause may apply in chambers that, for special reasons, a direction may be given for continuing such cause according to the ordinary course of the High Court of Justice. (*See Ib.*)

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ORDER LXI.

FORMS.

The forms contained in the Appendices hereto are to be used with such variations or modifications as circumstances may require. (*See R. Sup. C., April, 1880, R. 52.*)

478

Forms to be used.



## APPENDICES TO THE FOREGOING RULES.

## APPENDIX (A).

## PART I.

FORMS OF WRITS OF SUMMONS AND NOTICE IN LIEU  
OF SUMMONS.

## No. 1.

(See Act of 1875, Appendix A, Pt. I., No. 1.; R. Sup. C., April, 1880,  
Schedule, Form A, 1a.)

*General Form of Writ of Summons.*

In the High Court of Justice.  
—Division.

Between *A.B.* Plaintiff,  
and  
*C.D.* and *E.F.* Defendants.

VICTORIA, by the Grace of God, &c.

To *C.D.* of            in the county of            and *E.F.* of

We command you, That within 8 days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of *A.B.*; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, the Honourable President, &c.

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within 6 calendar months from the date thereof, or if renewed, within 6 calendar months from the date of such renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the [            ] office at

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &c.

*Where the writ is to be specially indorsed add:—*The following are the particulars:—(*Giving them. See Part II. post.*)

This writ was issued by *E.F.*, of            solicitor for the said plaintiff, who resides at           , or, this writ was issued by the plaintiff in person who resides at            [*mention the city, town, or township, and also the name of the street and number of the house of the plaintiff's residence, if any, or in case of a township, the number of the lot and concession.*]

*Indorsement to be made on the writ after service thereof.*

This writ was served by *X.Y.* on *C.D.* [the defendant or one of the defendants], on Monday, the            day of           , 18           .  
(Signed)            *X.Y.*

## No. 2.

(See Act of 1875, Appendix A, Pt. I., No. 2; R. Sup. C., June, 1876, R. 2; R. Sup. C., April, 1880, Schedule, Form A, 2a.)

*Writ for service out of Ontario or where notice in lieu of service is to be given out of Ontario.*

In the High Court of Justice.  
 ————Division.

Between A.B., Plaintiff,  
 and  
 C.D. and E.F. Defendants.

VICTORIA, by the grace of God, &c.

To C. D., of

We command you C. D., that within [*here insert the number of days directed by Order II., or as the case may be*] after the service, on you, of this writ and of the plaintiff's statement of claim delivered herewith, [*or notice of this writ as the case may be*], inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of A.B., and your defence thereto, if any, to be delivered; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, the Honourable President, &c.

Memorandum and indorsements as in Form No. 1,

Indorsement to be made on the writ before issue thereof:

N. B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of Ontario. When the defendant to be served is not a British subject, and is not in British dominions notice of the writ, and not the writ itself is to be served upon him.

This notice was served by X. Y., on G. H., (the defendant or one of the defendants) on the day of 18 .

Indorsed the day of 18 .

(Signed)  
 (Address)

## No. 3.

(See Act of 1875, Appendix A, Pt. 1, No. 3; R. Sup. C., June, 1876, R. 2; R. Sup. C., April, 1880, Schedule, Form A, 3a.)

*Notice of writ, in lieu of service, to be given out of Ontario.*

In the High Court of Justice.  
 ————Division.

Between A.B. Plaintiff,  
 and  
 C.D., E.F., and G.H., Defendants.

To G.H., of

Take notice that A.B., of \_\_\_\_\_ has commenced an action against you, G.H., in the \_\_\_\_\_ Division of Her Majesty's High Court of Justice in Ontario, by writ of that Court, dated the day of \_\_\_\_\_, A.D. 18 \_\_\_\_\_; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within [\_\_\_\_\_] days after the receipt of this notice inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action, and your defence thereto, if any, to be delivered; and in default of your so doing, the said A.B., may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the [\_\_\_\_\_] office at

Dated, &c.

(Signed) A.B., of \_\_\_\_\_ &c.

or  
 X. Y., of \_\_\_\_\_ &c.  
 Solicitor for A.B.

N.B.—This notice is to be used when the person to be served is not a British subject, and is not in British dominions.

This notice was served by X. Y., on G. H., (the defendant or one of the defendants) on the day of 18 .

Indorsed the day of 18 .

(Signed)  
 (Address)

## PART II.

## INDORSEMENTS ON WRITS OF SUMMONS.

No. 4.

## SECTION I.

(See R. Sup. C., Appx. A., Pt. II., Section 2.)

*Money Claims where no Special Indorsement under Order III., Rule 4.*

The plaintiff's claim is \$            for the price of goods sold.            Goods sold.

*This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.*

The plaintiff's claim is \$	for money lent [and interest].	Money lent.
The plaintiff's claim is \$	whereof \$            is for the price of goods	Several demands.
sold, and \$            for money lent, and \$            for interest.		Rent.
The plaintiff's claim is \$	for arrears of rent.	Salary, &c.
The plaintiff's claim is \$	for arrears of salary as a clerk [or as the	
<i>case may be].</i>		
The plaintiff's claim is \$	for interest upon money lent.	Interest.
The plaintiff's claim is \$	for a general average contribution.	General average.
		Freight, &c.
The plaintiff's claim is \$	for freight and demurrage.	
The plaintiff's claim is \$	for lighterage.	Tolls.
The plaintiff's claim is \$	for market tolls and stallage.	Penalties.
The plaintiff's claim is \$	for penalties under the Statute. [ .	
The plaintiff's claim is \$	for money deposited with the defendant	Banker's balance.
as a banker.		Fees, &c., as solicitors.
The plaintiff's claim is \$	for fees for work done [and \$            money	Commission.
expended] as a solicitor.		
The plaintiff's claim is \$	for commission as [state character as	
<i>auctioneer, broker, &amp;c.]</i>		
The plaintiff's claim is \$	for medical attendance.	Medical attendance, &c.
The plaintiff's claim is \$	for a return of premiums paid upon	Return of premium.
policies of insurance.		Warehouse rent.
The plaintiff's claim is \$	for the warehousing of goods.	Carriage of goods.
The plaintiff's claim is \$	for the carriage of goods by railway.	Use and occupation of house.
The plaintiff's claim is \$	for the use and occupation of a house.	Hire of goods.
		Work done.
The plaintiff's claim is \$	for the hire of [furniture].	Board and lodging.
The plaintiff's claim is \$	for work done as surveyor.	
The plaintiff's claim is \$	for board and lodging.	Schooling.
The plaintiff's claim is \$	for the board, lodging and tuition of	
<i>X. Y.</i>		
The plaintiff's claim is \$	for money received by the defendant as	Money received.
solicitor [or factor, or collector, or, &c.] of the plaintiff.		Fees of office.
The plaintiff's claim is \$	for fees received by the defendant under	
colour of the office of		
The plaintiff's claim is \$	for a return of money overcharged for	Money overpaid.
the carriage of goods by railway.		
The plaintiff's claim is \$	for a return of fees overcharged by the	
defendant as		
The plaintiff's claim is \$	for a return of money deposited with	Return of money by stakeholder.
the defendant as stakeholder.		Money won from stakeholder.
The plaintiff's claim is \$	for money entrusted to the defendant	Money entrusted to agent.
as stakeholder, and become payable to plaintiff.		
The plaintiff's claim is \$	for a return of money entrusted to the	Money obtained by fraud.
defendant as agent to the plaintiff.		
The plaintiff's claim is \$	for a return of money obtained from the	
plaintiff by fraud.		

Money paid by mistake.	The plaintiff's claim is \$	for a return of money paid to the defendant by mistake.
Money paid for consideration which has failed.	The plaintiff's claim is \$	for a return of money paid to the defendant for [work to be done, left undone; or a bill to be taken up, not taken up &c..]
Money paid by surety for defendant.	The plaintiff's claim is \$	for a return of money paid as a deposit upon shares to be allotted.
Rent paid.	The plaintiff's claim is \$	for money paid for the defendant as his surety.
Money paid on accommodation bill.	The plaintiff's claim is \$	for money paid for rent due by the defendant.
Contribution by surety.	The plaintiff's claim is \$	upon a bill of exchange accepted [or indorsed] for the defendant's accommodation.
By co-debtor.	The plaintiff's claim is \$	for a contribution in respect of money paid by the plaintiff as surety.
Money paid for calls.	The plaintiff's claim is \$	for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.
Money payable under award.	The plaintiff's claim is \$	for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.
Life policy.	The plaintiff's claim is \$	for money payable under an award.
Money bond.	The plaintiff's claim is \$	upon a policy of insurance upon the life of X. Y., deceased.
Foreign judgment.	The plaintiff's claim is \$	upon a bond to secure payment of \$1,000, and interest.
Bill of exchange, &c.	The plaintiff's claim is \$	upon a judgment of the Court, in the Province of Quebec.
	The plaintiff's claim is \$	upon a cheque drawn by the defendant.
	The plaintiff's claim is \$	upon a bill of exchange accepted [or drawn or indorsed] by the defendant.
	The plaintiff's claim is \$	upon a promissory note made [or indorsed] by the defendant.
	The plaintiff's claim is \$	against the defendant A.B. as acceptor, and against the defendant C.D. as drawer [or indorser] of a bill of exchange.
Surety.	The plaintiff's claim is \$	against the defendant as surety for the price of goods sold.
	The plaintiff's claim is \$	against the defendant A.B. as principal, and against the defendant C.D. as surety for the price of goods sold [or arrears of rent, or for money lent, or for money received by the defendant A.B., as traveller for the plaintiffs, or, &c.]
Del credere agent.	The plaintiff's claim is \$	against the defendant as a del credere agent for the price of goods sold [or as losses under a policy].
Calls.	The plaintiff's claim is \$	for calls upon shares.

## No. 5.

## SECTION II.

(See R. Sup. C., Appx. A, Pt. II., Section 3; R. S. O., c. 50, s. 18.)

*Indorsement for Costs, &c.*

[Add to the above Forms] and \$ for costs; and if the amount claimed be paid to the plaintiff or his solicitor within 8 days [or if the writ is to be served out of Ontario, or notice in lieu of service allowed, insert the time limited for appearance] from the service hereof, further proceedings will be stayed.

## No. 6.

## SECTION III.

(See R. Sup. C., Appx. A, Pt. II., Section 4.)

*Indorsements on Writs for Damages and other Claims.*

Agent, &c.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and \$ for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [or, &c.] of the plaintiff [and \$ for money received as factor, &c.]

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [or plaintiff].

The plaintiff's claim is for damages for non-compliance with the award Arbitration. of X. Y.

The plaintiff's claim is for damages for assault [and false imprison- Assault, &c. ment, and for malicious prosecution].

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C. D. By husband and wife.

The plaintiff's claim is for damages for assault by the defendant C. D. Against husband and wife.

The plaintiff's claim is for damages for injury by the defendant's negli- Solicitor. gence as solicitor of the plaintiff.

The plaintiff's claim is for damages for negligence in the custody of Bailment. goods [and for wrongfully detaining the same].

The plaintiff's claim is for damages for negligence in the keeping of Pledge. goods pawned [and for wrongfully detaining the same].

The plaintiff's claim is for damages for negligence in the custody of Hire. furniture lent on hire [or a carriage lent], [and for wrongfully, &c.]

The plaintiff's claim is for damages for wrongfully neglecting [or Banker. refusing] to pay the plaintiff's cheque.

The plaintiff's claim is for damages for breach of a contract to accept Bill. the plaintiff's drafts.

The plaintiff's claim is upon a bond conditioned not to carry on the Bond. trade of a

The plaintiff's claim is for damages for refusing to carry the plaintiff's Carrier. goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship Charter-party. [Mary].

The plaintiff's claim is for wrongfully depriving plaintiff of goods, house- Damages for depriving of goods. hold furniture, &c.

The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained.

The plaintiff's claim is for damages for improperly distraining.

Distress-Replevin. Wrongful distress.

[This form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value].

The plaintiff's claim is for damages for infringement of the plaintiff's Fishery. right of fishing.

The plaintiff's claim is for damages for fraudulent misrepresentation on Fraud. the sale of a horse [or a business, or shares, or, &c.].

The plaintiff's claim is for damages for fraudulent misrepresentation of Guarantee. the credit of A. B.

The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

The plaintiff's claim is for a loss under a policy upon the ship "Royal Insurance. Charter," and freight or cargo [or for return of premiums].

[This Form shall be sufficient whether the loss claimed be total or partial].

The plaintiff's claim is for a loss under a policy of fire insurance upon Fire insur- house and furniture. ance.

The plaintiff's claim is for damages for breach of a contract to insure a house.

The plaintiff's claim is for damages for breach of contract to keep a Landlord and house in repair. tenant.

- The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.
- Medical man. The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.
- Mischivous animal. The plaintiff's claim is for damages for injury by the defendant's dog.
- Negligence. The plaintiff's claim is for damages for injury to the plaintiff [*or, if by husband and wife, to the plaintiff C.D.*] by the negligent driving of the defendant or his servants.
- The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.
- The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.
- Lord Campbell's Act. The plaintiff's claim is as executor of *A.B.* deceased, for damages for the death of the said *A.B.*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.
- Promise of marriage. The plaintiff's claim is for damages for breach of promise of marriage.
- Seduction. The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.
- Sale of goods. The plaintiff's claim is for damages for breach of contract to accept and pay for goods.
- The plaintiff's claim is for damages for non-delivery [*or short delivery or defective quality, or other breach of contract of sale*] of cotton [*or, &c.*]
- Sale of land. The plaintiff's claim is for damages for breach of warranty of a horse.
- The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] land.
- The plaintiff's claim is for damages for breach of contract to let [*or take*] a house.
- The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] the lease, with goodwill, fixtures, and stock-in-trade of a public-house.
- The plaintiff's claim is for damages for breach of covenant for title [*or for quiet enjoyment, or, &c.*] in a conveyance of land.
- Trespass to land. The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river*].
- Support. The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or house or mine*].
- Way. The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or private way*].
- Watercourse, &c. The plaintiff's claim is for damages for wrongfully diverting [*or obstructing, or polluting, or diverting water from*] a watercourse.
- The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or into the plaintiff's mine*].
- The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.
- Pasture. The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.
- [*This form shall be sufficient whatever the nature of the right to pasture be.*]
- Light. The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.
- Patent. The plaintiff's claim is for damages for the infringement of the plaintiff's patent.
- Copyright. The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.
- Trade mark. The plaintiff's claim is for damages for wrongfully using [*or imitating*] the plaintiff's trade mark.
- Work. The plaintiff's claim is for damages for breach of a contract to build a ship [*or to repair a house, &c.*]
- The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.
- Nuisance. The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or, &c.*]
- The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or, &c.*]

The plaintiff's claim is for damages for loss of the plaintiff's goods in Innkeeper. the defendant's inn.

The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same. Claim for return of goods; damages.

The plaintiff's claim is to recover possession of a house, No. in Ejectment. street, in the City of Ottawa; or of the N.E. ¼ of lot 2, in the 3rd concession of the Township of in the county of

The plaintiff's claim is to establish his title to [here describe property], and to recover the rents thereof. To establish title and recover rents.

[The two previous forms may be combined.]

The plaintiff's claim is for dower out of lot number (or describing the property otherwise with reasonable certainty). And take notice that the plaintiff claims damages for the detention of her dower from the day of (See R. S. O., c. 55, ss. 7, 10.) Dower.

Add to indorsement if a mandamus is claimed.

And for a mandamus. Mandamus.

Add to indorsement if an injunction is claimed.

And for an injunction. Injunction.

Add to Indorsement where Claim is to land, or to establish title, or both.

And for mesne profits. Mesne profits.

And for an account of rents or arrears of rent. Arrears of rent.

And for breach of covenant for [repairs]. Breach of covenant.

No. 7. SECTION IV.

(See R. Sup, C., Appx. A., Pt. II., Section 7.)

Money Claims—Special Indorsements under Order III, Rule 4.

1. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

1879—31st December.—	
Balance of account for butcher's meat to this date . . . . .	\$142
1880—1st January to 31st of March.—	
Butcher's meat supplied . . . . .	297
	<u>\$439</u>
1880—1st February.—Paid . . . . .	180
	<u>Balance due . . . . . \$259</u>

2. The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as surety, for the price of goods sold to A.B. The following are the particulars:—

1881—2nd February. Guarantee by C.D. of the price of woollen goods to be supplied to A.B.	
2nd February—To goods . . . . .	\$225
3rd March—To goods . . . . .	151
17th March—To Goods . . . . .	27
5th April—To Goods . . . . .	65
	<u>\$468</u>

3. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Premissory note for \$1,000, dated 1st January 1879, made by defendant, payable 4 months after date.	
Principal . . . . .	\$1,000
Interest . . . . .	

4. The plaintiff's claim is against the defendant A.B. as acceptor, and against the defendant C.D. as drawer, of a bill of exchange. The following are the particulars:—

Bill of exchange for \$2,000, dated 1st January, 1880, drawn by defendant C.D. upon and accepted by defendant A.B., payable 3 months after date.	
Principal . . . . .	\$2,000
Interest . . . . .	

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars :—

Bond dated 1st January, 1879. Condition for payment of \$500 on the 26th December, 1879.

Principal due . . . . . \$500  
Interest

6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars :—

Deed dated . . . . . covenant to pay \$3,000 and interest.  
Principal due . . . . . \$800  
Interest . . . . .

No. 8.

SECTION V.

(See R. Sup. C., Appx. A., Pt. II., Sec. 8.)

*Indorsements of Character of Parties.*

- Executor.** The plaintiff's claim is as executor [or administrator] of *C. D.*, deceased, for, &c.  
The plaintiff's claim is against the defendant *A. B.*, as executor [or, &c.] of *C. D.*, deceased, for, &c.  
The plaintiff's claim is against the defendant *A. B.*, as executor of *X. Y.*, deceased, and against the defendant *C. D.*, in his personal capacity, for, &c.
- By husband and wife, executrix.** The claim of the plaintiff *C. D.* is as executrix of *X. Y.*, deceased, and the claim of the plaintiff *A. B.* as her husband, for
- Against husband and wife, executrix.** The claim of the plaintiff is against the defendant *C. D.*, as executrix of the defendant *C. D.*, deceased, and against the defendant *A. B.*, as her husband, for
- Assignee in insolvency.** The plaintiff's claim is as assignee in insolvency of *A. B.*, for  
The plaintiff's claim is against the defendant as assignee in insolvency of *A. B.*, for
- Trustees.** The plaintiff's claim is as [or the plaintiff's claim is against the defendant as] trustee under the will of *A. B.* [or under the settlement upon the marriage of *A. B.* and *X. Y.*, his wife].
- Heir and devisee.** The plaintiff's claim is against the defendant as heir-at-law of *A. B.*, deceased.
- Qui tam action.** The plaintiff's claim is against the defendant *C. D.*, as heir-at-law, and against the defendant *E. F.*, as devisee of lands under the will of *A. B.*  
The plaintiff's claim is as well for the Queen as for himself, for

No 9.

SECTION VI.

*Indorsements in Matters which formerly belonged to the exclusive jurisdiction of equity.*

(a) *Creditor to administer Estate.*

(See R. Sup. C., Appx. A., Pt. II., Section 2, No. 1.)

The plaintiff's claim is as a creditor of *X. Y.*, of deceased, to have the [real and] personal estate of the said *X. Y.*, administered. The defendant *C. D.* is sued as the administrator of the said *X. Y.* [and the defendants *E. F.* and *G. H.* as his co-heirs-at-law].

(b) *Legatee to administer Estate.*

(See *Ib.*, No. 2.)

The plaintiff's claim is as a legatee under the will dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, of *X. Y.* deceased, to have the [real and] personal estate of the said *X. Y.* administered. The defendant *C. D.* is sued as the executor of the said *X. Y.* [and the defendants *E. F.* and *G. H.* as his devisees].

(c) *Partnership account.*(See *Ib.*, No. 3.)

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the \_\_\_\_\_ day of \_\_\_\_\_], and to have the affairs of the partnership wound up.

(d) *By Mortgagee for sale and for immediate payment and possession.*(See *Ib.*, No. 4; G. O., Chy., Sch. S.)

The plaintiff's claim is on a mortgage dated the \_\_\_\_\_ day of \_\_\_\_\_ made between \_\_\_\_\_ [or by deposit of title deeds], and that the mortgage may be enforced by sale, and payment to the plaintiff by the defendant personally of any balance. (*If order for immediate payment is wanted add*), And take notice further that the plaintiff claims to be entitled forthwith to execution against the goods and lands of you (*naming the defendant against whom this order is claimed*) to recover payment of the amount due by you.

(*If order for immediate possession is wanted add*), And take notice further, that the plaintiff claims to be entitled to an order for the immediate delivery of the mortgaged premises to him.

(e) *By Mortgagee for foreclosure and for immediate payment and possession.*(See *Ib.*, No. 7; G. O., Chy., Sch. S.)

The plaintiff's claim is on a mortgage dated the \_\_\_\_\_ day of \_\_\_\_\_, made between \_\_\_\_\_ (or by deposit of title deeds), and that the mortgage may be enforced by foreclosure.

(*If order for immediate payment is wanted add*), And take notice further that the plaintiff claims to be entitled forthwith to execution against the goods and lands of you (*naming the defendant against whom this order is claimed*) to recover payment of the amount due by you.

(*If order for immediate possession is wanted add*), And take notice further that the plaintiff claims to be entitled to the immediate possession of the mortgaged premises.

(*At the end of the indorsement add*), If you desire a sale of the mortgaged premises instead of a foreclosure, and do not intend to defend the action, you must within the time allowed for appearance, file in the office within named, a notice in writing, signed by yourself or your solicitor, to the following effect:—"I desire a sale of the mortgaged premises in the plaintiff's writ of summons mentioned, or a competent part thereof, instead of a foreclosure," and you must deposit the sum of \$80 to meet the expenses of such sale.

(f) *By Mortgagor for Redemption.*(See *Ib.*, No. 5.)

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated \_\_\_\_\_ and made between [parties], and to redeem the property comprised therein.

(g) *Raising Portions.*(See *Ib.*, No. 6.)

The plaintiff's claim is that the sum of \$ \_\_\_\_\_, which by an indenture of settlement dated \_\_\_\_\_, was provided for the portions of the younger children of \_\_\_\_\_ may be raised.

(h) *Execution of Trusts.*(See *Ib.*, No. 7.)

The plaintiff's claim is to have the trusts of an indenture dated \_\_\_\_\_ and made between \_\_\_\_\_, carried into execution.

(i) *Cancellation or Rectification.*(See *Ib.*, No. 8.)

The plaintiff's claim is to have a deed dated \_\_\_\_\_ and made between  
[parties], set aside or rectified,

(j) *Specific Performance.*(See *Ib.*, No. 9.)

The plaintiff's claim is for specific performance of an agreement dated  
the \_\_\_\_\_ day of \_\_\_\_\_, for the sale by the plaintiff to the defendant of  
certain [freehold] hereditaments at \_\_\_\_\_

(k) *Alimony.*(See *G. O. Chy.*, No. 488.)

The plaintiff's claim is for alimony; and the plaintiff demands as interim  
alimony until the trial of the action the monthly (or weekly) sum of \$ \_\_\_\_\_  
to be paid to her on the \_\_\_\_\_ day of each month (or week) at \_\_\_\_\_ and the  
interim costs to which she is entitled by the practice in that behalf.

NOTE.—Where the plaintiff desires to register a *lis pendens* the writ of  
summons may contain such short description of the property as may be neces-  
sary or proper for that purpose.

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## APPENDIX (B).

## NOTICES, &amp;c.

## No. 10.

(See R. Sup. C., April, 1880, Form B, 17.)

*Notice of Motion to Court.*

In the High Court of Justice.

—Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the Court will be moved on behalf of on day the day of 18 at o'clock in the forenoon, or so soon thereafter as counsel can be heard, that (*state the object of the intended application*).

Dated the day of 18 .

(Signed)  
Solicitor for the

To

## No. 11.

*Notice of Motion in Chambers.*

[Title, &amp;c.]

Take notice that a motion will be made on behalf of in Chambers at Osgoode Hall, in the City of Toronto, on day the day of 18, at o'clock in the noon, or so soon thereafter as the motion can be heard, for an order for time to, &c.,

For time.

or, that be at liberty to sign final judgment in this action for the amount indorsed on the writ with interest, if any, and costs ;

For final judgment under Order 10. To amend writ.

or, that the Plaintiff be at liberty to amend the writ of summons in this action by

or, that the do furnish the said with a For particular statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of the Supreme Court, Order 12, Rule 11.

or, for an account in writing of the particulars of the Plaintiff's claim in this action (with dates and items, *or as the case may be*), and that unless such particulars be delivered in 4 days, all further proceedings be stayed until the delivery thereof ;

For particulars (general).

or, for an account in writing of the particulars of the injuries and expenses mentioned in the Statement of Claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered within days, all further proceedings be stayed until the delivery thereof ;

For particulars (accident).

or, that the order of in this action, dated the day of , 18, be (discharged, or varied by, &c.), on the grounds disclosed in the affidavit of , filed in support of this application ;

To discharge or vary order

or, that this action be dismissed with costs to be taxed and paid to the Defendant by the Plaintiff for want of prosecution, the Plaintiff not having, &c. ;

To dismiss action.

- For discovery of documents. *or, that the* \_\_\_\_\_ *answer within* \_\_\_\_\_ *days, stating what* \_\_\_\_\_ *documents are or have been in* \_\_\_\_\_ *possession or power relating to* \_\_\_\_\_ *the matters in question in this action ;*
- To inspect documents. *or, that the* \_\_\_\_\_ *be at liberty to inspect, and take copies of,* \_\_\_\_\_ *or extracts from* \_\_\_\_\_ *, and that in the meantime all further* \_\_\_\_\_ *proceedings be stayed ;*
- To examine witness before trial. *or, that* \_\_\_\_\_ *a witness on behalf of the* \_\_\_\_\_ *be examined* \_\_\_\_\_ *forthwith before* \_\_\_\_\_ *upon the usual terms ;*
- For Commission to examine witnesses. *or, that the* \_\_\_\_\_ *be at liberty to issue a commission for the ex-* \_\_\_\_\_ *amination of witnesses on* \_\_\_\_\_ *behalf at* \_\_\_\_\_ *, and that* \_\_\_\_\_ *the trial of this action be stayed until the return of such commission upon* \_\_\_\_\_ *the usual terms ;*
- To refer under section 43 of the Act. *or, that the following question arising in this action, namely :—* \_\_\_\_\_ *be referred for inquiry and report to* \_\_\_\_\_ *under section 43 of the Judicature Act ;*
- To refer under section 44 of the Act. *or, that the* \_\_\_\_\_ *in this action be tried by* \_\_\_\_\_ *under* \_\_\_\_\_ *section 44 of the Judicature Act ;*
- For compulsory reference to Master. *or, that (this action or the matters of account in this action or the fol-* \_\_\_\_\_ *lowing questions in this action being matters of account, namely, &c.) be* \_\_\_\_\_ *referred to the certificate of one of the Masters of the Supreme Court of* \_\_\_\_\_ *Judicature to award or certify ;*
- For examination of judgment debtor as to means. *or, that the above-named judgment debtor be orally examined as to* \_\_\_\_\_ *whether any and what debts are owing to him, and do attend for that* \_\_\_\_\_ *purpose before the Master in Chambers (or as the case may be) at such time* \_\_\_\_\_ *and place as he may appoint, and that the said judgment debtor produce* \_\_\_\_\_ *his books, &c., before the said Master at the time of the examination ;*
- For trial of action in County Court. *or, that this action be tried before the County Court of* \_\_\_\_\_ *holden on* \_\_\_\_\_
- For taxation of costs (client's application). *or, that the bill of fees, charges and disbursements, delivered to the* \_\_\_\_\_ *applicant by the above-named solicitor be referred to the Master to be* \_\_\_\_\_ *taxed, and that the said solicitor give credit for all sums of money by him* \_\_\_\_\_ *received of or on account of the applicant, and refund what (if anything)* \_\_\_\_\_ *he may on such taxation appear to have been overpaid, and that the* \_\_\_\_\_ *Master do tax the costs of the reference, and certify what shall be found* \_\_\_\_\_ *due to or from either party in respect of the bill and demand, and costs of* \_\_\_\_\_ *the reference to be charged (if payable) according to the event of the tax-* \_\_\_\_\_ *ation pursuant to the statute, and that the said solicitor do not commence* \_\_\_\_\_ *or prosecute any action or suit touching the demand pending the reference,* \_\_\_\_\_ *and that upon payment by the applicant of what (if anything) may appear* \_\_\_\_\_ *to be due to the said solicitor, the said solicitor do deliver up to the appli-* \_\_\_\_\_ *cant, or as he may direct, all books, deeds, papers and writings, in the* \_\_\_\_\_ *said solicitor's possession, custody, or power, belonging to the applicant ;*
- For taxation of costs (solicitor's application). *or, that his bill of fees, charges, and disbursements delivered to* \_\_\_\_\_ *(hereinafter called the said client) be referred to the Master to be taxed,* \_\_\_\_\_ *the said solicitor giving credit for all sums of money by him received from* \_\_\_\_\_ *or on account of the said client, and refunding what (if anything) may on* \_\_\_\_\_ *such taxation appear to have been overpaid, and that the Master tax the* \_\_\_\_\_ *costs of the reference, and certify what shall be found due to or from either* \_\_\_\_\_ *party in respect of the bill and demand, and of the costs of the reference* \_\_\_\_\_ *to be paid according to the event of the taxation pursuant to the statute ;*
- For taxation of costs after action brought. *or, that the plaintiff's bill of costs, charges and disbursements delivered to* \_\_\_\_\_ *the defendant, for the recovery of which the action is brought, be referred* \_\_\_\_\_ *to the Master to be taxed, and that the plaintiff do upon the taxation give* \_\_\_\_\_ *credit for all sums of money by him received from or on account of the* \_\_\_\_\_ *defendant, and that the Master do tax the costs of the reference, and certify* \_\_\_\_\_ *what upon such reference shall be found due to or from either party in* \_\_\_\_\_ *respect of the bill and demand, and of the costs of the reference (pursuant* \_\_\_\_\_ *to the statute), and that the plaintiff be restrained from prosecuting this* \_\_\_\_\_ *action touching the demand pending the reference, and that upon payment* \_\_\_\_\_ *of what (if anything) may appear to be due thereon to the plaintiff, together* \_\_\_\_\_ *with the costs of this action to be also taxed and paid, all further proceed-* \_\_\_\_\_ *ings be stayed ;*

or, that the plaintiff and the claimant appear and state the nature and particulars of their respective claims to the moneys, the subject-matter of this action, and maintain or relinquish the same, and abide by such order as may be made hereon, and that in the meantime all further proceedings be stayed ;

For inter-pleader order (by Stakeholder).

or, that the plaintiff and the claimant appear and state the nature of their respective claims to the goods and chattels seized by the above-named sheriff under the writ of *fiery facias* issued in this action and maintain or relinquish the same and abide by such order as may be made herein, and that in the meantime all further proceedings be stayed.

For inter-pleader order (by sheriff).

No. 12.

(See G. O. Chy., No. 561.)

Notice of application for Administration Order or respecting the guardianship of an infant.

In the High Court,  
 \_\_\_\_\_ Division.

Between A.B., plaintiff,  
 and  
 C. D., defendant.

To Mr. C. D.

Take notice that an application will be made to \_\_\_\_\_, in Toronto, (or to \_\_\_\_\_ at his office in the city (or town) of, &c., as the case may be), on the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ o'clock in the forenoon, (or if opposed, then to a Judge in Chambers so soon thereafter as a Judge shall be sitting in Chambers, for an order for the administration of the estate, real and personal, of \_\_\_\_\_ by the Court, or for an order appointing \_\_\_\_\_ guardian of \_\_\_\_\_ an infant) ; and upon such application will be read the affidavits of this day filed.

Dated, &c.

X. Y., Solicitor for

No. 13.

(See R. Sup. C., April, 1880.

Notice of Entry of Appearance.

In the High Court of Justice,  
 \_\_\_\_\_ Division.

Between \_\_\_\_\_

Plaintiff,

and

Defendant.

Take notice, that \_\_\_\_\_ have this day entered an appearance at \_\_\_\_\_ for the defendant to the writ of summons in this action.

The said defendant require [or do not require] delivery of a statement of claim.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
 Solicitor for the defendant.

To \_\_\_\_\_

No. 14.

(See *Ib.*, Appx. A., Part 1, No. 7.)

In the High Court of Justice,  
 \_\_\_\_\_ Division.

Between A.B., plaintiff,  
 and  
 C.D., and E.F., defendants.

The defendant, C.D., limits his defence to part only of the property mentioned in the writ in this action, that is to say, to the north-west quarter of the lot.

Yours, &c.,  
 G. H.,  
 Solicitor for the said defendant C.D.

Mr. X. Y., plaintiff's solicitor.

## No. 15.

*Notice disputing amount.*In the High Court of Justice.  
— Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the defendant disputes the amount claimed by the plaintiff (or the defendant insists that the amount due to the plaintiff is \$        only; or the defendant insists that the amount due to the plaintiff is \$        for principal and \$        for interest, since the        day of &c., and no more, as the case may be.

(Signed)  
Solicitor for the defendant.

To

## No. 16.

*(See Ib., Form 3.)**Notice in lieu of Statement of Claim.*In the High Court of Justice.  
— Division.

Between A.B., plaintiff,  
and  
C.D., defendant.

The particulars of the plaintiff's claim herein, and of the relief and remedy to which he claims to be entitled, appear by the indorsement upon the writ of summons.

Dated, &amp;c.

X. Y.,  
Solicitor for Plaintiff.

## No. 17.

*(See R. Sup. C., Appx. (B) Form 2.)**Confession of Defence.*In the High Court.  
— Division.

Between A.B., plaintiff,  
and  
C. D., defendant.

The plaintiff confesses the defence stated in the — paragraph of the defendant's statement of defence [or, of the defendant's further statement of defence].

Dated, &amp;c.

X. Y.,  
Solicitor for Plaintiff.

## No. 18.

*(See R. Sup. C., Appx. (B) Form 1. Act s. 18, sub-s. 4; Order 12, R. 19.)**Notice by Defendant to Third Party.*

Notice filed        day of

In the High Court,  
— Division.

Between A. B., plaintiff,  
and  
C. D., defendant.

To Mr. X. Y.

Take notice that this action has been brought by the plaintiff against the defendant [as surety for M. N., upon a bond conditioned for payment of \$10,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, or, also surety for the said M. N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the        day of        , A.D.        ).

Or [as acceptor of a bill of exchange for \$2,500, dated the day of \_\_\_\_\_, A. D. \_\_\_\_\_, drawn by you upon and accepted by the defendant and payable 3 months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C.D.*, you must cause an appearance to be entered for you within 8 days after service of this notice.

In default of your so appearing, you will not be entitled in any future proceeding between the defendant *C.D.* and yourself to dispute the validity of the judgment in this action whether obtained by consent or otherwise.

Dated, &c.

(Signed) *E. T.*

Or

*X. Y.*,

Solicitor for the defendant,  
*E. T.*

Appearance to be entered at \_\_\_\_\_

### No. 19.

(See *Ib.*, Form 4.)

*Indorsement on copy Defence and Counter-claim to be served on Third Party.*

“To the within named *X. Y.*

Take notice that if you do not appear to the within counter-claim of the within-named *C. D.*, within 8 days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Appearances are to be entered at \_\_\_\_\_

### No. 20.

*Indorsement on Order adding or changing parties under Order 44.*

Take notice, that if you desire to discharge this order you must apply to the Court for that purpose within 12 days after the service hereof upon you. The original statement of claim in this cause is filed in the office of the \_\_\_\_\_ at \_\_\_\_\_ (and if the service is after a judgment directing a reference to a Master or other officer, add) and the reference under the judgment in this matter is being prosecuted in the office of the \_\_\_\_\_ at \_\_\_\_\_

### No. 21.

(See *Ib.*, Form 5.)

*Notice of payment into Court.*

In the High Court of Justice.

\_\_\_\_\_ Division.

*A. B. v. C. D.*

Take notice that the defendant has paid into Court \$ \_\_\_\_\_ and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim. for, &c.]

Dated, &c.

To Mr. *X. Y.*,  
the Plaintiff's Solicitor.

*Z.*,

Defendant's Solicitor.

No. 22.

(See *Ib.*, Form 6.)*Acceptance of Sum Paid into Court.*In the High Court of Justice,  
\_\_\_\_\_ Division.

A. B. v. C. D.

Take notice that the plaintiff accepts the sum of \$ \_\_\_\_\_ paid by you  
into Court in satisfaction of the claim in respect of which it is paid in.

Dated, &amp;c.

X. Y.,  
Plaintiff's Solicitor.To Z.,  
Defendant's Solicitor:  
\_\_\_\_\_

No. 23.

(See *Ib.*, Form 10.)*Form of Notice to produce Documents.*In the High Court of Justice,  
\_\_\_\_\_ Division.

A. B. v C. D.

Take notice that the [plaintiff or defendant], requires you to produce  
for his inspection the following documents referred to in your [statement  
of claim, or defence, or affidavit dated the \_\_\_\_\_ day of  
A.D. \_\_\_\_\_].

Dated, &amp;c.

[Describe documents required.]

X. Y.,  
Solicitor to theTo Z.,  
Solicitor for  
\_\_\_\_\_

No. 24.

(See R. Sup. C., April, 1880, Schedule, Form B, 10a.)

*Notice to Produce (General Form).*In the High Court of Justice,  
\_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that you are hereby required to produce and shew to the  
Court on the trial of this action all books, papers, letters, copies of letters,  
and other writings and documents in your custody, possession, or power,  
containing any entry, memorandum, or minute relating to the matters in  
question in this action, and particularly

Dated, &amp;c.

To the above-named

h Solicitor or agent

} Solicitor for the above-named  
\_\_\_\_\_

## No. 25.

(See R. Sup. C., Appendix (B.) Form 11).

*Form of Notice to inspect Documents.*In the High Court of Justice.  
\_\_\_\_\_ Division.*A. B. v. C. D.*

Take notice that you can inspect the documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_ A. D. [except the deed numbered \_\_\_\_\_ in that notice] at my office on \_\_\_\_\_ day next the \_\_\_\_\_ instant, between the hours of 12 and 4 o'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of the documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_ A. D. on the ground that [state the ground]:—

Dated, &amp;c.

X. Y.,  
Solicitor for

## No. 26.

(See *Ib.*, Form 12.)*Form of Notice to admit Documents.*In the High Court of Justice.  
\_\_\_\_\_ Division.*A. B. v. C. D.*

Take notice that the plaintiff [or defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his solicitor or agent at \_\_\_\_\_, on \_\_\_\_\_, between the hours of \_\_\_\_\_; and the defendant [or plaintiff] is hereby required, within 4 days from the said day, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies, and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

X. Y.,  
Solicitor for

Dated, &amp;c.,

To *E. F.*, solicitor [or agent] for defendant [or plaintiff].  
*G. H.*, solicitor [or agent] for plaintiff [or defendant].

[Here describe the documents, the manner of doing which may be as follows:]

## ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between <i>A. B.</i> and <i>C. D.</i> first part, and <i>E. F.</i> second part .....	January 1, 1878.
Indenture of lease from <i>A. B.</i> to <i>C. D.</i> .....	February 1, 1878.
Indenture of release between <i>A. B.</i> , <i>C. D.</i> , first part, &c. ....	February 2, 1878.
Letter—defendant to plaintiff .....	March 1, 1878.
Policy of Insurance on goods by ship " <i>Isabella</i> ," on voyage from Toronto to Kingston .....	July 3, 1877.
Memorandum of agreement between <i>C. D.</i> , captain of said ship, and <i>E. F.</i> .....	August 1, 1878.
Bill of exchange for \$500 at 3 months, drawn by <i>A. B.</i> on and accepted by <i>C. D.</i> , indorsed by <i>E. F.</i> and <i>G. H.</i> .....	May 1, 1879.

Description of Documents.	Dates.	Original or duplicate served, sent, or delivered, when, how and by whom.
Register of baptism of <i>A.B.</i> in the parish of <i>X</i> ..... Letter—Plaintiff to defendant.	January 1, 1848. February 1, 1848.	Sent by General Post February 2, 1848.
Notice to produce papers.....	March 1, 1878.	Served March 2, 1878 on defendant's attorney by <i>E. F.</i> , of —
Record of a Judgment of the Court of Queen's Bench in an action, <i>J.S.</i> and <i>J.N.</i> .....	Trinity Term, 10th Vic.	

No. 27.

(See *Ib.* Form 14.)

*Form of Notice of Trial.*

In the High Court of Justice.  
— Division.

*A.B. v. C.D.*

Take notice of trial of this action [or the issues in this action ordered to be tried] at — for the — day of — next  
*X. Y.*, plaintiff's solicitor [or as the case may be].

Dated, &c.

To *Z.*, defendant's solicitor [or as the case may be].

No. 28.

(See *Ib.* Form B. 18.)

*Notice of Entry of Demurrer for Argument.*

In the High Court of Justice.  
— Division.

Between

and

Plaintiff,

Defendant.

Take notice, that I have this day entered for argument the demurrer of the — to the — in this action.

Dated the — day of — 18 .

(Signed)

of

Solicitor for the

To

No. 29.

(See *Ib.* Form B. 19.)

*Notice of Discontinuance.*

In the High Court of Justice.

\_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the plaintiff hereby wholly discontinues this action, (or withdraws so much of his claim in this action as relates to, &c. (If not against all the defendants add), "As against the defendant," &c.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)

of \_\_\_\_\_  
Solicitor for the plaintiff.

No. 30.

(See *Ib.*, Form B. 21).

*Notice of Cross-examination of Deponents at Trial on Affidavits.*

(See Order 35, R. 4.)

In the High Court of Justice.

\_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the \_\_\_\_\_ intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

Solicitor for the

To

THE SCHEDULE above referred to.

Name of Deponent.	Address and Description.	Date when affidavit filed.

No. 31.

(See *Ib.*, Form B. 22.)

*Notice of Renewal of Writ of Execution.*

In the High Court of Justice.

\_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the writ of \_\_\_\_\_ issued in this action directed to the sheriff of \_\_\_\_\_ and bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 18 , has been renewed for one year from the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)

Solicitor for the

To the sheriff of \_\_\_\_\_

## APPENDIX (C).

## AFFIDAVITS.

No. 32.

(See R. Sup. C., April, Form B. 24.)

*Affidavit of Service of Summons.*In the High Court of Justice.  
\_\_\_\_\_ Division.

Between

Plaintiff,

Defendant.

I, \_\_\_\_\_ of \_\_\_\_\_ solicitor for the above-named \_\_\_\_\_ make oath and say as follows :—

I did on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, before the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, serve the above-named \_\_\_\_\_ in this action with a true copy of the summons hereto annexed marked A, by leaving it at the \_\_\_\_\_ of the said \_\_\_\_\_ situate, &c., with \_\_\_\_\_ there Sworn at this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ Before me, &c.

This affidavit is filed on behalf of the \_\_\_\_\_

No. 33.

(See *Ib.*, Form 9.)*Form of Affidavit as to Documents.*In the High Court of Justice.  
\_\_\_\_\_ Division.Between A.B., Plaintiff,  
and  
C.D., Defendant.

I, the above-named defendant C.D., make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.
2. I object to produce the said documents set forth in the second part of the said first schedule hereto.
3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].
4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.
5. The last-mentioned documents were last in my possession or power on [*state when*].
6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].
7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher,

receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action or any of them, or wherein any entry has been made relative to such matters, or any of them other than and except the documents set forth in the said first and second schedules hereto, and the pleadings and other proceedings in the action.

No. 34.

(See *Ib.*, Form B. 26.)

*Affidavit in support of Garnishee Order.*

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between \_\_\_\_\_  
 and \_\_\_\_\_  
 Judgment Creditor,  
 Judgment Debtor.

I, \_\_\_\_\_ of \_\_\_\_\_ the above-named judgment creditor [or solicitor for the above-named judgment creditor] make oath and say as follows:—

1. By a judgment of the Court given in this action, and dated the day of \_\_\_\_\_ 18\_\_\_\_, it was adjudged that I [or the above-named judgment creditor] should recover against the above-named judgment debtor the sum of \$ \_\_\_\_\_, and costs to be taxed, and the said costs were by a master's certificate dated the day of \_\_\_\_\_ 18\_\_\_\_, allowed at \$ \_\_\_\_\_

2. The said \_\_\_\_\_ still remains unsatisfied to the extent of \_\_\_\_\_ and interest amounting to \$ \_\_\_\_\_

3. (Name, address and description of garnishee) is indebted to the judgment debtor \_\_\_\_\_ in the sum of \$ \_\_\_\_\_ or thereabouts.

4. The said (insert name of garnishee) is within the jurisdiction of this Court.

Sworn at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.  
 Before me \_\_\_\_\_

This affidavit is filed on behalf of the \_\_\_\_\_

No. 35.

(See *Ib.*, Form B. 27.)

*Affidavit on Interpleader.*

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between \_\_\_\_\_  
 and \_\_\_\_\_  
 Plaintiff,  
 Defendant.

I, \_\_\_\_\_ of \_\_\_\_\_ the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and was served on me on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_. I have not yet delivered a statement of defence herein.

2. The action is brought to recover \_\_\_\_\_. The said \_\_\_\_\_ (is or are) in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed (if claim in writing make the writing an exhibit) by one \_\_\_\_\_ who (state expectation of suit or that he has already sued).

4. I do not in any manner collude with the said \_\_\_\_\_ or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said \_\_\_\_\_ in such manner as the Court may order or direct.

Sworn at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.  
 Before me \_\_\_\_\_

This affidavit is filed on behalf of the \_\_\_\_\_



The plaintiff claims—

1. To have the real and personal estate of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken.
  2. To have a receiver appointed of the rents of his real estate.
  3. Such further or other relief as the nature of the case may require.
- The plaintiff proposes that this action should be tried at London.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
*X. Y.*, of \_\_\_\_\_ Plaintiff's Solicitor.

No. 38.

In the High Court of Justice,  
 Division.

In the matter of the estate of *A. B.*, deceased.

Between *E. F.*, Plaintiff,  
 and  
*G. H.*, Defendant.

*Statement of Defence.*

1. The plaintiff is an illegitimate child of *M. N.* She was never married. Defence.  
 The defendant admits the other allegations contained in the 1st and 3rd paragraphs of the plaintiff's statement of claim.
2. The intestate was not entitled to any real estate at his death.
3. The personal estate of *A. B.* was not sufficient for the payment of his debts, and has all been applied in payment of his funeral and testamentary expenses, and part of his debts.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
*X. Y.*, of \_\_\_\_\_ Defendant's Solicitor.

No. 39.

(See *Ib.*, Form 3.)

In the High Court of Justice,  
 Division.

Writ issued 22nd December, 18 \_\_\_\_\_

In the matter of the estate of *A. B.* deceased.

Between *E. F.*, Plaintiff,  
 and  
*G. H.*, Defendant.

*Statement of Claim.*

Administra-  
 tion of a Tes-  
 tator's Estate.

1. *A. B.*, of *K.*, in the county of *L.*, duly made his last will, dated the Claim.  
 1st day of March, 1873, whereby he appointed the defendant and *M. N.* (who died in the testator's lifetime), executors thereof, and devised and bequeathed his real and personal estate to and to the use of his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain 21, or a daughter who should attain that age, or marry, upon trust as to his real estate for the person who would be the testator's heir at-law, and as to his personal estate for the persons who would be the testator's next of kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.
2. The testator died on the 1st day of July, 1880, and his will was proved by the defendant, on the 4th October, 1880. The plaintiff has not been married.
3. The testator was at his death entitled to real and personal estate; the defendant entered into the receipt of the rents of the real estate and got in the personal estate; he has sold some part of the estate.

The plaintiff claims—

1. To have the real and personal estate of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken.
  2. Such further or other relief as the nature of the case may require.
- The plaintiff proposes that this action should be tried at Napanee.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
*X. Y.*, of \_\_\_\_\_ Plaintiff's Solicitor.

## No. 40.

In the High Court of Justice,  
Division.

In the matter of the estate of A. B. deceased.

Between E. F., Plaintiff,  
and  
G. H., Defendant.

*Statement of Defence.*

Defence.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some real estate which the defendant sold, and which produced the net sum of \$22,500, and the testator had some personal estate which the defendant got in and which produced the net sum of \$5,400.

2. The defendant applied the whole of the said sums and the sum of \$84 which the defendant received from rents of the real estate, in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the 10th of January, 1880, and offered the plaintiff free access to the vouchers, to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant admits the allegations in the 1st and 2nd paragraphs of the plaintiff's statement of claim.

5. The defendant submits that the plaintiff ought to pay the costs of this action.

Delivered the  
X. Y., of

day of  
Defendant's Solicitor.

18 by

## No. 41.

(See *Ib.*, Form 5.)

Agent.

*Action against Del credere Agents.*

In the High Court of Justice,  
Division.

Writ issued 23rd August, 18

Between A. B. and Company, Plaintiffs,  
and  
E. F. and Company, Defendants.

*Statement of Claim.*

Claim.

1. The plaintiffs are manufacturers of artificial manures, carrying on business at \_\_\_\_\_, in the county of \_\_\_\_\_.

2. The defendants are commission agents, carrying on business in Toronto.

3. In the early part of the year \_\_\_\_\_, the plaintiffs commenced, and down to the \_\_\_\_\_ 18\_\_\_\_, continued to consign to the defendants, as their agents, large quantities of their manures for sale, and the defendants sold the same and received the price thereof and accounted to the plaintiffs therefor.

4. No express agreement has ever been entered into between the plaintiffs and the defendants with respect to the terms of the defendants' employment as agents. The defendants have always charged the plaintiffs a commission at \_\_\_\_\_ per cent. on all sales effected by them, which is the rate of commission ordinarily charged by all del credere agents in the said trade. And the defendants, in fact, always accounted to the plaintiff for the price, whether they received the same from the purchasers or not.

5. The plaintiffs contend that the defendants are liable to them as del credere agents, but if not so liable are under the circumstances herein-after mentioned liable as ordinary agents.

6. On the \_\_\_\_\_, the plaintiffs consigned to the defendants for sale a large quantity of goods, including \_\_\_\_\_ tons of \_\_\_\_\_.

7. On or about the \_\_\_\_\_, the defendants sold \_\_\_\_\_ tons of parts of such goods to one G. H. for \$ \_\_\_\_\_, at 3 months' credit, and delivered the same to him.

8. G. H. was not, at that time, in good credit and was in insolvent circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.

9. G. H. did not pay for the said goods, but before the expiration of the said 3 months for which credit had been given, the estate of the said G. H. was placed in liquidation under the insolvency Acts then in force; and the plaintiffs have never received the said sum of \$ \_\_\_\_\_ or any part thereof.

The plaintiffs claim:

1. Damages to the amount of \$ \_\_\_\_\_
  2. Such further or other relief as the nature of the case may require.
- The plaintiffs propose that this action should be tried at Hamilton.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 42. [Title as in claim, omitting date of issue of writ.]

*Statement of Defence.*

1. The defendants deny that the said commission of \_\_\_\_\_ per cent. Defence. mentioned in paragraph 4 of the claim is the rate of commission ordinarily charged by del credere agents in the said trade, and say that the same is the ordinary commission for agents other than del credere agents, and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers.

2. The defendants deny that they were ever liable to the plaintiffs as del credere agents.

3. With respect to the 8th paragraph of the plaintiffs' statement of claim, the defendants say that at the time of the said sale to the said G. H., the said G. H. was a person in good credit. If the truth is that the said G. H. was then in insolvent circumstances, the defendants did not suspect and had not reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

4. The defendants admit the allegations contained in paragraphs 1, 2, 3, 6, 7 and 9 of the plaintiffs' statement of claim.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 43.

(See *Ib.*, Form 6.)

Bill of exchange.

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 23rd August, 18 \_\_\_\_\_  
Between A. B. and C. D., Plaintiffs,  
and  
E. F. and G. H., Defendants.

*Statement of Claim.*

1. Messrs. M. N. & Co., on the \_\_\_\_\_ day of \_\_\_\_\_ drew a bill Claim. of exchange upon the defendants for \$ \_\_\_\_\_, payable to the order of the said Messrs. M. N. & Co. 3 months after date, and the defendants accepted the same.

2. Messrs. M. N. & Co. indorsed the bill to the plaintiffs.

[3. (Introduced by amendment to meet the defence in the defendant's statement of defence *infra*). The plaintiff gave value and consideration for the said bill in manner following, that is to say: on the

day 18, the said Messrs. *M. N. & Co.* were indebted to the plaintiff in about \$ the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about \$ which last mentioned goods have since been delivered by him to them. And at the time of the order for such last mentioned goods it was agreed between Messrs. *M. N. & Co.* and the plaintiff, and the order was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon; together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities, including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiff.]

4. The bill became due on the , and the defendant has not paid it.

The plaintiffs claim:—(state claim)

The plaintiffs propose that this action should be tried at Kingston.

Delivered the day of 18, by  
X. Y., of Plaintiffs' Solicitor.

[Title.]

No. 44. *Statement of Defence.*

**Defence.**

1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances hereinafter stated, and except as hereinafter mentioned there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. *M. N. & Co.*, the drawers thereof, and the defendants, that the said Messrs. *M. N. & Co.* should sell and deliver to the defendants free on board ship at the port of 1200 tons of coal during the month of , and that the defendants should pay for the same by accepting the said Messrs. *M. N. & Co.*'s draft for \$ at 6 months.

3. The said Messrs. *M. N. & Co.* accordingly drew upon the defendants, and the defendants accepted the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. *M. N. & Co.* of the said 1200 tons of coals under their said contract, and the time for delivery has long since elapsed; but the said Messrs. *M. N. & Co.* never delivered the same, or any part thereof, but have always refused to do so, whereby the consideration for the defendant's acceptance has wholly failed.

5. The plaintiffs first received the said bill, and it was first indorsed to them after it was overdue.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the 2nd, 3rd, and 4th paragraphs hereof.

Delivered the day of 18 by  
X. Y., of Defendants' Solicitor.

No. 45. (*Reply where plaintiff does not introduce into his statement of claim the allegations necessary by way of reply to the defence.*)

[Title.]

*Reply.*

1. The plaintiff joins issue upon the defendant's statement of defence.

2. The plaintiff gave value and consideration for the said bill in manner following, that is to say, on the day of 18, the said Messrs. *M. N. & Co.* were indebted to the plaintiff in about \$ the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about \$ which last mentioned goods have since been delivered by him to them. At the time of the order for such last mentioned goods it was agreed between Messrs. *M. N. & Co.* and the plaintiff, and the order



## No. 48.

Action on Bill  
of Exchange.

Statement of Claim.

In the High Court of Justice,  
— Division.

Writ issued 1st February, 18 .

Between A. B. Plaintiff,  
and  
C. D., Defendant.

Claim.

1. The plaintiff on the                      day of                      188 , drew  
a bill of exchange upon the defendant for \$                      payable 3 months  
after date, and the defendant accepted the same.2. The bill became due on                      day of                      188 , and the  
defendant has not paid it.3. [*Amendment to meet defence infra.*] The defendant, who at the time  
of the acceptance of the said bill was an infant within the age of 21 years,  
ratified and confirmed the said acceptance after he attained full age and  
before action, by a writing made and signed by him.]The plaintiff claims :—(*State claim.*)

The plaintiff proposes that this action should be tried at Picton.

Delivered the                      day of                      18                      by  
X. Y., of                      Plaintiff's Solicitor.

## No. 49.

Statement of Defence.

[Title.]

At the time of making the alleged acceptance of the said bill the defend-  
ant was an infant within the age of 21 years.Delivered the                      day of                      18                      by  
X. Y., of                      Defendant's Solicitor.

## No. 50.

*(Reply where plaintiff does not introduce into his statement  
of claim the allegations necessary by way of reply to the  
defence.)*

[Title.]

Reply.

The defendant C. D., who at the time of the acceptance of the said bill  
was an infant within the age of 21 years, ratified and confirmed the said  
acceptance after he attained full age and before action, by a writing made  
and signed by him.Delivered the                      day of                      18                      by  
X. Y., of                      Plaintiff's Solicitor.

## No. 51.

Bill of  
exchange and  
consideration.*(See Ib., Form 7.)*In the High Court of Justice,  
— Division.

Writ issued 8rd October, 18 ,

Between A. B. and C. D., Plaintiffs,  
and  
E. F. and G. H., Defendants.

Statement of Claim.

Claim.

1. The plaintiffs are                      merchants, factors, and commission  
agents, carrying on business in Toronto.

2. The defendants are merchants and commission agents, carrying on business at Montreal.

3. For several years prior to the 18 , the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents; and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

On the of , the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of \$ was accordingly due to the plaintiffs from the defendants.

4. On or about the , 18 , the plaintiffs sent to the defendants a statement of the accounts between them, shewing the said sum as the balance due to the plaintiffs from the defendants; and the defendants agreed to the said statement of accounts as correct, and to the said sum of \$ as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

5. The defendants requested the plaintiffs to give them 3 months' time for payment of the said sum of \$ , and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.

6. The plaintiffs thereupon on the drew 2 bills of exchange upon the defendants, one for \$ , and the other for \$ , both payable to the order of the plaintiffs 3 months after date, and the defendants accepted the bills.

The said bills became due on the 18 , and the defendants have not paid the bills, or either of them, nor the said sum of \$

The plaintiffs claim :—  
\$ and interest to the date of judgment.

The plaintiffs propose that this action should be tried at Toronto.

Delivered the day of 18 by  
X. Y., of Plaintiff's Solicitor.

No. 52.

(See *Ib.*, Form 13.)

False imprisonment.

In the High Court of Justice,  
Division.

Writ issued 3rd September, 18 .

Between A. B., Plaintiff,  
and  
E. F., Defendant.

*Statement of Claim.*

1. The plaintiff is a journeyman painter. The defendant is a builder, Claim. having his building yard, and carrying on business at Ottawa, and for 6 months before and up to the 22nd August, 18 , the plaintiff was in the defendant's employment as a journeyman painter.

2. On the said 22nd August, 18 , the plaintiff came to work as usual in the defendant's yard, at about 6 o'clock in the morning.

3. A few minutes after the plaintiff had so come to work the defendant's foreman, X. Y., who was then in the yard, called the plaintiff to him, and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X. Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.

4. The defendant was present at the time when the plaintiff was given into custody, and authorized and assented to his being given into custody; and in any case X. Y., in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.

5. The plaintiff upon being so given into custody, was taken by the said constable a considerable distance through various streets, on foot, to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

6. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for 3 months.

The plaintiff claims \$ damages.

The plaintiff proposes that this action should be tried at Ottawa.

Delivered the day of 18 by  
X. Y., of Plaintiff's Solicitor.

[Title.]

*Statement of Defence.*

No. 53.

Defence.

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorized or assented to his being given into custody. And the said X. Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business.

2. At some time about 5 or 6 o'clock on the , being the evening before the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5.30 o'clock on the evening of the the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from, and he had no business in or near the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by X. Y. what he had been in the shed and behind the stack of timber for, and he denied having been in either place. X. Y. had reasonable and probable cause for suspecting, and did suspect that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

Delivered the day of 18 by  
X. Y., of Defendant's Solicitor.

No 54.

(See *Ib.*, Form 15.)

Fraud.

In the High Court of Justice,  
— Division.

Writ issued 3rd September, 188 .

Between A. B., Plaintiff,  
and  
E. F., Defendant.

*Statement of Claim.*

Claim.

1. In or about March, 1880, the defendant caused to be inserted in the Newspaper an advertisement, in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade of a baker's shop and business, and described the same as an increasing business, and doing 12 barrels a week. The advertisement directed application for particulars to be made to X. Y.

2. The plaintiff having seen the advertisement applied to X. Y., who placed him in communication with the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at \_\_\_\_\_ with the lease, fixtures, fittings, stock-in-trade, and good-will.

3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than 12 barrels a week.

4. On the 5th of April, 1890, the plaintiff, believing the said statements of the defendant to be true, agreed to purchase the said premises from the defendant, for \$2000, and paid to him a deposit of \$300 in respect of the purchase.

5. On the 15th of April the purchase was completed, an assignment of the lease executed, and the balance of the purchase money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negotiations for the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than 4 barrels a week. And the said premises were not of the value of \$2000, or any saleable value whatever.

7. The defendant made the false representations hereinbefore mentioned well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.

The plaintiff claims \$ \_\_\_\_\_ damages.

The plaintiff proposes that this action should be tried at Brockville.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 55.

[Title.]

*Statement of Defence.*

1. The defendant says that at the time when he made the representations mentioned in the 3rd paragraph of the statement of claim and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over 12 barrels a week. And the defendant denies the allegations of the 6th paragraph of the statement of claim.

Defence.

2. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, shewing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations, and not upon any statement or representation whatever of the defendant.

3. The defendant admits the allegations of paragraphs 1, 2, 3 and 4 of the statement of claim.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 56.

(See *Ib.*, Form 16.)

Guarantee.

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 3rd September, 1881.

Between A. B. and C. D., Plaintiffs,  
and

E. F. and G. H., Defendants.

*Statement of Claim.*

1. The plaintiffs are brewers, carrying on their business at Guelph, Claim. under the firm of X. Y. & Co.

2. In the month of March, 1879, *M. N.* was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and the defendants and *M. N.*, that the plaintiffs should employ *M. N.* upon the defendants entering into the guarantee hereinafter mentioned.

3. An engagement in writing was accordingly made and entered into, on or about the 30th March, 1879, between the plaintiffs and the defendant, whereby, in consideration that the plaintiffs would employ *M. N.* as their collector, the defendants agreed that they would be answerable for the due accounting by *M. N.* to the plaintiffs for, and the due payment over by him to the plaintiffs of all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed *M. N.* as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st December, 1880.

5. At various times between the 29th of September, and the 25th of December, 1880, *M. N.* received on behalf of the plaintiffs and as their collector, sums of money from debtors of the plaintiffs, amounting in the whole to the sum of \$3,400; and of this amount *M. N.* neglected to account for or pay over to the plaintiffs sums amounting in the whole to \$908, and appropriated the last-mentioned sums to his own use.

6. The defendants have not paid the last-mentioned sums, or any part thereof, to the plaintiffs.

The plaintiffs claim:—(State claim)

The plaintiffs propose that this action should be tried at Guelph.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 57.

Negligence.

(See *Ib.*, Form 20.)

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 3rd September, 1881.

Between *A. B.*, Plaintiff,  
and  
*E. F.*, Defendant.

*Statement of Claim.*

Claim.

1. The plaintiff is a shoemaker, carrying on business at Toronto. The defendant is a soap and candle manufacturer at the same place.

2. On the 23rd May, 1881, the plaintiff was walking eastward along the south side of King Street, in the city of Toronto, at about 3 o'clock in the afternoon. He was obliged to cross Yonge Street, which is a street running into King Street at right angles thereto. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant's under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of King Street into Yonge Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for 4 months ill and suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims \$ \_\_\_\_\_ damages.

The plaintiff proposes that this action should be tried at Lindsay.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 5 .

[Title.]

*Statement of Defence.*

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to John Smith, of \_\_\_\_\_, a carman and contractor employed by the defendant to carry and deliver goods for him; and the persons under whose charge and control the said van was were the servants of the said John Smith. Defence.

2. The defendant denies that the van was turned out of King Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 59.

*Statement of Claim.*Action for  
Assault.

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 15th March, 18 .

Between A. B., Plaintiff,  
and  
E. F., Defendant.

1. The plaintiff is a \_\_\_\_\_ carrying on business at \_\_\_\_\_

2. On the \_\_\_\_\_ day of \_\_\_\_\_ the defendant assaulted the plaintiff, and the plaintiff was seriously hurt and wounded, and was for a long time in consequence of his injuries, unable to transact his business, and incurred expense for nursing and medical attendance.

3. [*Amendment to meet defence infra.*] The defendant pretends that he committed the assault complained of in his own defence; but the facts are that the defendant was trespassing on the plaintiff's land, and refused to leave though requested to do so, whereupon the plaintiff laid his hands on the defendant in order to remove him, using so much force and no more than was necessary for that purpose.]

The plaintiff claims \$ \_\_\_\_\_ damages.

The plaintiff proposes that this action should be tried at Cobourg.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 60.

[Title.]

*Statement of Defence.*

The plaintiff first assaulted the defendant who, thereupon, committed the alleged assault in his own defence.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 61. (*Reply where plaintiff does not introduce into his statement of claim the allegations necessary by way of reply to the defence.*)

[Title.]

*Reply.*

The defendant E. F., pretends that he committed the assault complained of in his own defence; but the facts are that the defendant was

trespassing on the plaintiff's land, and refused to leave though requested to do so, whereupon the plaintiff laid his hands on the defendant in order to remove him, using so much force and no more than was necessary for that purpose.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 62.

Action against  
Railway Com-  
pany for Inju-  
ries by Col-  
lision caused  
through  
Negligence.

*Statement of Claim.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued \_\_\_\_\_ 1881.

Between A. B., Plaintiff.  
and  
\_\_\_\_\_ Defendants.

1. The defendants are carriers of passengers upon a railway from Toronto to \_\_\_\_\_

2. In January, 1881, the plaintiff took a ticket from Toronto to \_\_\_\_\_ and was received by the defendants as a passenger to be by them safely carried in a train which started from Toronto for \_\_\_\_\_

3. Owing to the negligence of the defendants in the management of their railway, the train in which the plaintiff was travelling came into collision with an engine, at a short distance from Toronto.

4. The plaintiff was thrown from his seat by the said collision, and much injured about the head, and had his right arm broken.

5. [*The following paragraphs may be introduced by amendment to meet Defence infra.* The defendants allege that the plaintiff accepted the sum of \$300 in full satisfaction of all cause of action which he might have on account of the said collision, but the facts are as follows:

6. A short time after the collision an officer of the defendants procured the plaintiff to accept the said accord and satisfaction by fraudulently representing that his injuries were of a temporary nature, and that if they should afterwards turn out to be more serious than he anticipated, he would still be able to obtain further compensation from the defendants.

7. The plaintiff fully believing the said representations, and acting upon the faith thereof, was induced thereby to accept the said accord and satisfaction, and then accepted the same subject to the express condition that he should not thereby exclude himself from further compensation from the defendants if his injuries should prove more serious than he then anticipated.

8. After the acceptance of the said accord and satisfaction, the injuries suffered by the plaintiff in the collision did turn out to be more serious than was anticipated at the time aforesaid, and thereupon the plaintiff commenced the present action.]

The plaintiff claims \$ \_\_\_\_\_ damages.

The plaintiff proposes that this action should be tried at Toronto.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 63.

[Title.]

*Statement of Defence.*

1. Shortly after the collision referred to in the statement of claim, one of the officers of the defendants called upon the plaintiff for the purpose of ascertaining from him whether he intended to make any claim against the defendants, arising out of the said collision.

2. At such interview the plaintiff informed the said officer that he did intend to make a claim against the defendants arising out of the said collision; and it was there and then agreed between the plaintiff and the said

officer acting on behalf and by the authority of the defendants, that in consideration that the defendants would pay to the plaintiff a sum of \$300, he, the plaintiff, would accept such sum from the defendants in full satisfaction and discharge of all cause of action which he had or might have against the said defendants on account of the said collision.

3. Thereupon the said officer acting on behalf of the defendants, paid to the plaintiff the sum of \$300, and the plaintiff received the same in full discharge of the aforesaid cause of action.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 64. (*Reply where Plaintiff does not introduce into his statement of claim the allegations necessary by way of reply to the Defence.*)

[Title.]

*Reply.*

1. The defendants allege that the plaintiff accepted the sum of \$300 in full satisfaction of all cause of action which he might have on account of the said collision, but the facts are as follows :

2. A short time after the collision an officer of the defendants procured the plaintiff to accept the said accord and satisfaction by fraudulently representing that his injuries were of a temporary nature, and that if they should afterwards turn out to be more serious than he anticipated, he would still be able to obtain further compensation from the defendants.

3. The plaintiff fully believing the said representations, and acting upon the faith thereof, was induced thereby to accept the said accord and satisfaction, and then accepted the same subject to the express condition that he should not thereby exclude himself from further compensation from the defendants if his injuries should prove more serious than he then anticipated.

4. After the acceptance of the said accord and satisfaction, the injuries suffered by the plaintiff in the collision did turn out to be more serious than was anticipated at the time aforesaid and thereupon the plaintiff commenced the present action.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 65.

(*See Ib.*, Form 18.)

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 3rd September, 1881.

Landlord  
Tenant.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

*Statement of Claim.*

1. On the \_\_\_\_\_ day of \_\_\_\_\_ the plaintiff, by Claim. deed, let to the defendant a house and premises, No. 52 \_\_\_\_\_ Street, in the City of Belleville, for a term of 21 years from the \_\_\_\_\_ day of \_\_\_\_\_, at the yearly rent of \$400 payable quarterly.

2. By the said deed, the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for 21 days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the \_\_\_\_\_, a quarter's rent became due; and on the \_\_\_\_\_, another quarter's rent became due. On the \_\_\_\_\_, both had been in arrear for 21 days, and both are still due.

5. On the same \_\_\_\_\_, the house and premises were not, and are not now, in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims :—

1. Possession of the said house and premises.
2. \$ \_\_\_\_\_ for arrears of rent.
3. \$ \_\_\_\_\_ damages for the defendant's breach of his covenant to repair.
4. \$ \_\_\_\_\_ for occupation of the house and premises from the \_\_\_\_\_, to the day of recovering possession.

The plaintiff proposes that this action should be tried at Belleville.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 66.

(See *Ib.*, Form 24.)

Recovery of  
Land.  
Landlord and  
Tenant.

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 4th January, 18 \_\_\_\_\_

Between A. B., Plaintiff,  
and  
C. D., Defendant.

*Statement of Claim.*

1. On the \_\_\_\_\_ day of \_\_\_\_\_ the plaintiff let to the defendant a house, No. 62 \_\_\_\_\_ Street, in the city of Ottawa, as tenant from year to year, at the yearly rent of \$420, payable quarterly, the tenancy to commence on the \_\_\_\_\_ day of \_\_\_\_\_

2. The defendant took possession of the house and continued tenant thereof until the \_\_\_\_\_ day of \_\_\_\_\_ last, when the tenancy determined by a notice duly given.

3. The defendant has disregarded the notice and still retains possession of the house.

4. [*Amendment to meet the counter-claim infra.*] (The defendant C. D. sets up in his defence that the plaintiff agreed to give to the defendant a new lease and the plaintiff A. B. admits the agreement alleged in the statement of defence, but he refuses to grant to the defendant a lease, inasmuch as such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant has not kept the house in good repair, and the same is now in a dilapidated condition.)

The plaintiff claims :—

1. Possession of the house.
2. \$ \_\_\_\_\_ for mesne profits from the \_\_\_\_\_ day of \_\_\_\_\_

The plaintiff proposes that this action should be tried at Ottawa.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 67. *Statement of Defence and Counter-claim.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

Between A. B., Plaintiff,  
and  
C. D., Defendant.  
(by original action,)

And between C. D., Plaintiff,  
and  
A. B., Defendant.  
(by counter-claim.)

Defence.

The defence and counter-claim of the above-named C. D.  
1. Before the determination of the tenancy mentioned in the statement of claim, the plaintiff A. B., by writing dated the \_\_\_\_\_ day of \_\_\_\_\_, and signed by him, agreed to grant to the defendant

C. D., a lease of the house mentioned in the statement of claim, at the yearly rent of \$450, for the term of 21 years, commencing from the day of \_\_\_\_\_, when the defendant, C. D.'s, tenancy from year to year determined, and the defendant has since that date been and still is in possession of the house under the said agreement.

2. By way of counter-claim the defendant claims to have the agreement specifically performed, and to have a lease granted to him accordingly. Counter-claim.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 68.

*Reply where plaintiff does not introduce into his statement of claim the allegations necessary by way of reply to the defence :*

[Title]

*Reply.*

The plaintiff, A. B., admits the agreement stated in the defendant, C. D.'s, statement of defence, but he refuses to grant to the defendant a lease, because such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair, and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant has not kept the house in good repair, and the same is now in a dilapidated condition. Reply.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 69.

(See *Ib.*, Form 25.)

Recovery of Land.

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued \_\_\_\_\_ 18 \_\_\_\_\_  
Between A. B. and C. D., Plaintiffs,  
and  
E. F., Defendant.

*Statement of Claim.*

1. K. L., late of Barrie in the County of Simcoe duly executed his last will, dated the 4th day of April, 18 \_\_\_\_\_, and thereby devised his lands at or near Barrie, and all other his lands in the County of Simcoe unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof. Claim.

2. K. L. died on the 3rd day of January 18 \_\_\_\_\_, and his said will was proved by the plaintiffs in the proper Surrogate Court on or about the 4th day of February, 18 \_\_\_\_\_.

3. K. L. was at the time of his death seised in fee of a house in Barrie, and 2 farms near there, being respectively lot No. 1 in the 3rd concession of the township of \_\_\_\_\_, and lot No. 5 in the 4th concession of the township of \_\_\_\_\_, both in the County of Simcoe.

4. The defendant, soon after the death of K. L., entered into possession of the house and 2 farms, and has refused to give them up to the plaintiff.

The plaintiffs claim :—

1. Possession of the house and 2 farms.

2. \$ \_\_\_\_\_ for mesne profits of the premises from the death of K. L. till such possession shall be given.

The plaintiffs propose that this action should be tried at Barrie.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 70.

[Title.]

*Statement of Defence.*

Defence.

1. The defendant is the eldest son of *T. L.*, deceased, who was the eldest son of *K. L.*, in the statement of claim named.

2. By articles bearing date the 31st day of May, 1867, and made previous to the marriage of *K. L.* with Martha his intended wife, *K. L.*, in consideration of such intended marriage, agreed to settle the house and 2 farms in the statement of claim mentioned (and of which he was then seised in fee) to the use of himself for his life, with remainder to the use of his intended wife for her life, and after the survivor's decease, to the use of the heirs of the body of the said *K. L.*, on his wife begotten, with other remainders over.

3. The marriage soon after took effect; *K. L.*, by deeds of lease and release, bearing date respectively the 4th and 5th of April, 1868, after reciting the articles in alleged performance of them, conveyed the house and 2 farms to the use of himself for his life, with remainder to the use of his wife for her life, and after the decease of the survivor of them, to the use of the heirs of the body of *K. L.* on the said Martha to be begotten, with other remainders over.

4. There was issue of the marriage an only son Thomas *L.* and 2 daughters. After the death of Thomas *L.*, which took place in February, 1874, *K. L.* on the 3rd May, 1874, executed a disentailing assurance, which was duly enrolled and thereby conveyed the house and 2 farms to the use of himself in fee.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 71.

Trespass.  
to Land.(See *Ib.*, Form 27.)

In the High Court of Justice.  
\_\_\_\_\_ Division.

Writ issued 3rd October, 18 .

Between *A. B.*, Plaintiff,  
and  
*E. F.*, Defendant.

*Statement of Claim.*

Claim.

1. The plaintiff was on the 5th March, 18 , and still is the owner and occupier of a farm in the Township of \_\_\_\_\_ in the County of \_\_\_\_\_, being lot No. 4 in the 7th concession of the said Township.

2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's and is separated therefrom by a fence and ditch.

3. For a long time prior to the 5th March, 18 , the defendant had wrongfully claimed to use the said road for his horses, carts and waggons on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th March, 18 , the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's fence and ditch upon each side of the road, and went upon the plaintiff's field beyond the fence and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use, or the user of the said road as a highway.



## APPENDIX (E).

## PRÆCIPES.

No. 74.

*Amended Summons.*

(See R. Sup. C., April, 1880, Form E, 18.)

[Title, &amp;c.]

Amend in pursuance of order [or fiat] dated \_\_\_\_\_ the writ of summons  
in this action by (*set out amendments when required*).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

Solicitor for the

No. 75.

*Renewed Summons.*(See *Ib.*, Form E, 19, R. Sup. C., Appx. A, Pt. 1, Form 5.)

[Title, &amp;c.]

Required in pursuance of order dated \_\_\_\_\_, a renewed writ of  
summons in this action,

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

Solicitor for the

No. 76.

*Entry of Appearance.*

(See R. Sup. C., April, 1880, Form E, 21.)

[Title, &amp;c.]

Enter an appearance for \_\_\_\_\_ in this action .

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)The said defendant require (or do not require, as the case may be) a  
statement of claim to be delivered.*(In case the defendant wishes to dispute the amount claimed, and to make  
no other defence, the following may be added),* The defendant disputes the  
amount claimed by the plaintiff, (or the defendant insists that the amount  
due to the plaintiff is \$ \_\_\_\_\_ only, or the defendant insists that the amount  
due to the plaintiff is, \$ \_\_\_\_\_ for principal and \$ \_\_\_\_\_ for interest, since  
the \_\_\_\_\_ day of \_\_\_\_\_ &c., and no more,) as the case may be.

No. 77. *Entry of Appearance in action for land limiting Defence.*(See *Ib.*, Form E, 22.)

[Title, &amp;c.]

Enter an appearance for the defendant \_\_\_\_\_ in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
 (Signed)  
 (Address)

The said defendant \_\_\_\_\_ require \_\_\_\_\_ a statement of claim to be delivered.

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No. 78. *Entry of Appearance, by new defendant under Order 44, Rule 3.*(See *Ib.*, Form E, 23.)

[Title, &amp;c.]

Enter an appearance for \_\_\_\_\_ who has been served with an order dated the \_\_\_\_\_ day of \_\_\_\_\_ to carry on and prosecute the proceedings in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
 (Signed)  
 (Address)

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No. 79. *Entry of Appearance, by party served with notice, under Order 12, Rule 19.*(See *Ib.*, Form E, 24.)

[Title, &amp;c.]

Enter an appearance for \_\_\_\_\_ to the notice issued in this action on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_, by the defendant \_\_\_\_\_ under the Rules of the Supreme Court, Order 12, Rule 19.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
 (Signed)  
 (Address)

The said defendant \_\_\_\_\_ require \_\_\_\_\_ a statement of claim to be delivered.

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No. 80. *Entry of Appearance to Counter-claim.*(See *Ib.*, Form E, 25.)

[Title, &amp;c.]

Enter an appearance for \_\_\_\_\_ to the counter-claim of the above-named defendant in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_  
 (Signed)  
 (Address)

No. 81.

*Mandamus.**(See Ib. Form E, 14.)*

[Title, &amp;c.]

Required in pursuance of order dated a writ of mandamus directed  
to commanding to returnable

Dated the day of 18 .

(Signed)  
(Address)

Solicitor for the

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No. 82.

*Prohibition.**(See Ib. Form E, 18.)*

In the High Court of Justice,  
— Division.

In the matter of a certain now depending in the Court  
Between and Plaintiff,  
and Defendant.

Required a writ of prohibition directed to the judge of the above-named  
Court and to the above-named plaintiff to prohibit them from further  
proceeding in the said

Dated the day of 18 .

(Signed)  
(Address)

Solicitor for the

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No. 83.

*Certiorari.**(See Ib., Form E, 12.)*

[Title, &amp;c.]

Required in pursuance of order dated a writ of certiorari directed to

Dated the day of 18 .

(Signed)  
(Address)

Solicitor for the

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No. 84.

*Entry for Argument Generally.**(See Ib., Form E. 29.)*

[Title, &amp;c.]

Set down for argument the

Dated the day of 18 .

(Signed)  
(Address)

No. 85. *Entry of Demurrer for Argument.*(See *Ib.* Form E, 28.)

[Title, &amp;c.]

Enter for argument the demurrer of \_\_\_\_\_ to the \_\_\_\_\_ in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ .

(Signed)  
(Address)No. 86. *Entry of Special Case.*(See *Ib.*, Form E, 30, R. Sup. C., Appx. B, Form 13.)

[Title, &amp;c.]

Set down for argument the special case filed in this action on the  
day of \_\_\_\_\_, 18 \_\_\_\_\_; (or set down the \_\_\_\_\_ dated the \_\_\_\_\_ day of  
18 \_\_\_\_\_, of Mr. \_\_\_\_\_ the \_\_\_\_\_ referee in this  
for hearing as a special case).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ .

(Signed)  
(Address)No. 87. *Search.*(See *Ib.*, R. Sup. C., April, 1880, Form E., 82)

[Title, &amp;c.]

Search for \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ .(Signed)  
(Address)Agent for \_\_\_\_\_  
SolicitorNo. 88. *Entry of Action for Trial.*(See *Ib.*, Form E, 26.)

[Title, &amp;c.]

Enter this action for trial.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ .

(Signed)  
(Address)No. 89. *Subpoena.*(See *Ib.*, Form E, 20.)

[Title, &amp;c.]

Required writ of subpoena \_\_\_\_\_ on behalf of the \_\_\_\_\_ directed to  
returnable \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ .

(Signed)  
(Address)

Solicitor for the

No. 90. *Commission to Examine Witnesses.*(See *Ib.*, Form E, 16.)

[Title, &amp;c.]

Required in pursuance of order dated \_\_\_\_\_ a commission to examine witnesses directed to \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18

(Signed)  
(Address)

Solicitor for the \_\_\_\_\_

No. 91. *Habeas Corpus ad Testificandum.*(See *Ib.* Form E, 15.)

[Title, &amp;c.]

Required in pursuance of order dated \_\_\_\_\_ a writ of habeas corpus ad testificandum directed to the \_\_\_\_\_ to bring \_\_\_\_\_ before \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18

(Signed)  
(Address)

Solicitor for the \_\_\_\_\_

No. 92. *Entry of Appeal.*(See *Ib.*, Form E, 27.)

[Title, &amp;c.]

Enter this appeal from the order [or judgment] of \_\_\_\_\_ in this action, dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(Signed)  
(Address)No. 93. *Fieri Facias.**Fieri Facias.*

(See R. Sup. C., Appx. (E), Form 1).

[Title, &amp;c.]

Required a writ of fieri facias directed to the sheriff of \_\_\_\_\_ to levy against C. D. \_\_\_\_\_ the sum of \$ \_\_\_\_\_ and interest thereon at the rate of \$ \_\_\_\_\_ per centum per annum from the day of \_\_\_\_\_ [and \$ \_\_\_\_\_ costs] to \_\_\_\_\_

Judgment [or order] dated \_\_\_\_\_ day of \_\_\_\_\_  
Taxing master's certificate, dated \_\_\_\_\_ day of \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_

(Signed)  
(Address)

Solicitor for the [party on whose behalf writ is] to issue.] \_\_\_\_\_

No. 94. *Venditioni Exponas.*(See *Ib.*, Form 3.)

[Title, &amp;c.]

Required a writ of venditioni exponas directed to the sheriff of  
to sell the goods and of *C. D.*, taken under a writ of fieri  
facias in this action tested day of

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

No. 95. *Writ of Sequestration.*(See *Ib.*, Form 6.)

[Title, &amp;c.]

Required a writ of sequestration against *C. D.* for not  
at the suit of *A. B.* directed to the sheriff of  
Order dated day of

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

No. 96. *Writ of Possession. (Lands.)*(See *Ib.*, Form 7.)

[Title, &amp;c.]

Required a writ of possession directed to the sheriff of to  
deliver possession to *A. B.* of  
Judgment dated day of

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

No. 97. *Writ of Delivery. (Chattels.)*(See *Ib.*, Form 8.)

[Title, &amp;c.]

Required a writ of delivery directed to the sheriff of to  
make delivery to *A. B.* of

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

No. 98. *Writ of Attachment.*(See *Ib.*, Form 9.)

[Title, &amp;c.]

Required in pursuance of order dated day of  
an attachment directed to the sheriff of against *C. D.* for  
not delivering to *A. B.*

Dated the day of 18 .

(Signed)

(Address)

Solicitor for the

## APPENDIX (F).

## SUBPENAS, &amp;c., FOR EXAMINATION OF WITNESSES.

(See R. Sup. C. April, 1880, Form G, 1.)

No. 99. *Subpœna ad Testificandum (General Form).*In the High Court of Justice,  
— — — Division.

Between

and

Plaintiff.

Defendant.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day, until the above cause is tried, to give evidence on behalf of the (plaintiff or defendant)

Witness, the Honourable President, &c., the  
day of 188 .

(See *Ib.*, Form G, 2.)No. 100. *Subpœna Duces Tecum (General Form).*

[Title, &amp;c.]

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced.*)

Witness, the Honourable President, &c., the  
day of 188 .

(See *Ib.*, Form G, 3.)No. 101. *Subpœna ad Testificandum at Assizes.*

[Title, &amp;c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said assizes until the above cause is tried, to give evidence on behalf of the

Witness, the Honourable President, &c., the  
day of 188 .



tions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the \_\_\_\_\_ of the Supreme Court of Judicature on or before the \_\_\_\_\_ day of \_\_\_\_\_ inclosed in a cover under the seals or seal of the commissioners or commissioner.

8. Before you or any of you, in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, the Honourable \_\_\_\_\_ President, &c., the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord one thousand eight hundred and \_\_\_\_\_

This writ was issued by  
of \_\_\_\_\_  
agent for \_\_\_\_\_  
of \_\_\_\_\_  
solicitor for the \_\_\_\_\_  
who reside \_\_\_\_\_ at \_\_\_\_\_

*Commissioners' Oath.*

You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. So help you God.

*Clerk's Oath.*

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions.

So help you God.

*Witnesses Oath.*

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God

*Interpreter's Oath.*

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which shall be administered to, and all and every the questions which shall be exhibited or put to all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English into the language of \_\_\_\_\_

such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

Direction of Interrogatories, &c., when returned by the Commissioners.

The \_\_\_\_\_ of the Snpreme Court of Jndicature,  
Osgoode Hall,  
Toronto.

No. 104. *Habeas Corpus ad Testificandum.*

(See *Ib.*, Form G, 12.)

[Title, &c.]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the [keeper of our prison at]

We command you that you bring \_\_\_\_\_, who it is said is detained in our prison under your custody \_\_\_\_\_, before \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, and so from day to day until the above action is tried, to give evidence on behalf of the \_\_\_\_\_. And that immediately after the said \_\_\_\_\_ shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, the Honourable \_\_\_\_\_ President, &c., the \_\_\_\_\_ day of \_\_\_\_\_

This writ was issued by \_\_\_\_\_ solicitor for the \_\_\_\_\_ who reside \_\_\_\_\_ at \_\_\_\_\_

## APPENDIX (G).

### CERTIORARI AND PROHIBITION.

(See *Ib.*, Form G, 8.)

No 105. *Certiorari to County Court.*

[Title, &c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the judge of the County Court of \_\_\_\_\_ greeting :

We, willing for certain causes to be certified of a certain cause pending in our Court before you against \_\_\_\_\_ at the suit of \_\_\_\_\_ command you that you send to us forthwith in the \_\_\_\_\_ Division of our High Court of Justice at Toronto, the proceedings in the said cause with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with the writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, the Honourable \_\_\_\_\_ President, &c., the \_\_\_\_\_ day of \_\_\_\_\_

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_ agent for \_\_\_\_\_ of \_\_\_\_\_ solicitor for the \_\_\_\_\_ who reside \_\_\_\_\_ at \_\_\_\_\_

(See *Ib.*, Form G, 9.)

No. 106. *Certiorari (Genera l).*

[Title, &c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the \_\_\_\_\_ greeting :

We, willing for certain causes to be certified of                    command you that you send to us in our High Court of Justice at Toronto, on the day of                    the                    aforesaid, with all things touching the same, as fully and entirely as they remain in                    together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, the Honourable                    President, &c., the day of                    .

This writ was issued by  
of  
agent for  
of  
solicitor for the                    who reside at                    .

(See *Ib.*, Form G, 10.)

No. 107.

*Prohibition.*

[Title, &c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the [judge of the County Court holden at]                    and to [name of plaintiff] of                    greeting:

Whereas we have been given to understand that you the said have [entered an action against] *C. D.* in the said Court, and that the said Court has no jurisdiction in the said [cause] or to hear and determine the said [action] by reason that [state facts shewing want of jurisdiction].

We therefore hereby prohibit you from further proceeding in the said [action] in the said Court.

Witness, the Honourable                    President, &c., the day of                    .

This writ was issued by  
of  
agent for  
of  
solicitor for the                    who reside at                    .

## APPENDIX (H).

## ORDERS.

(See R. Sup. C., April, 1880, Form H, 1.)

No. 108. *Summons (General Form).*

(For use in outer counties.)

In the High Court of Justice,  
— Division.

Between

and

Plaintiff,

Defendant.

Let all parties concerned attend before me at my Chambers on day the day of 18, at o'clock in the noon, on the hearing of an application on the part of for (state object of application, as in a notice of motion, according to forms in Appendix B).

Dated the day of 18 .

This summons was taken out by of solicitor, for  
To(See *Ib.*, Form H, 2.)No. 109. *Order (General Form).*In the High Court of Justice,  
— Division.

[Name of the Judge or Master] in Chambers.

Between

and

Plaintiff,

Defendant.

Upon hearing , and upon reading the affidavit of filed  
the day of 18 , and

It is ordered and that the costs of this application be

Dated the day of 18 .

(See *Ib.*, Form H, 18.)No. 110. *Order for Service out of Jurisdiction.*In the High Court of Justice,  
— Division.

[Name of the Judge or Master] in Chambers.

Between

and

Plaintiff,

Defendant.

Upon hearing , and upon reading the affidavit of filed  
the day of 18 , and

It is ordered that the plaintiff be at liberty to issue a writ for service out of the jurisdiction against

And it is further ordered that the time for appearance to the said writ be within days after the service thereof, and that the costs of this application be

Dated the day of 18 .

(See *Ib.*, Form H, 19.)**No. 111.** *Order for Substituted Service,*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
and  
Defendant.Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, andIt is ordered that service of a copy of this order, and of a copy of the writ  
of summons in this action, by sending the same by a pre-paid post letter,  
addressed to the defendant \_\_\_\_\_ at \_\_\_\_\_, shall be good and sufficient  
service of the writ.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

**No. 112.** *Order allowing Service made out of the Jurisdiction.*

(See Order 7.)

In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
and  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, andIt is ordered that the service of the writ (or notice of the writ) made  
upon the defendant as shewn by the said affidavit, be allowed as good  
and sufficient service.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 20.)**No. 113.** *Order for Renewal of Writ of Summons.]*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master, &amp;c.,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
and  
Defendant.Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, andIt is ordered that the writ in this action be renewed for 6 months  
from the date of its renewal, pursuant to the Rules of the Supreme Court  
Order 5., Rule 1.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 3.)**No. 114.** *Order for Time.*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master, &amp;c.,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
and  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, andIt is ordered that the \_\_\_\_\_ shall have \_\_\_\_\_ time for, &c. \_\_\_\_\_ and that  
the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 4.)

No. 115. Order under Order XI., No 1 (final judgment).

In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_It is ordered that the plaintiff may sign final judgment in this action for  
the amount indorsed on the writ, with interest, if any, and costs to be  
taxed, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

(See *Ib.*, Form H, 5.)No. 116. Order under Order XI., No. 2 (leave to  
defend unconditionally).In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_It is ordered that the defendant be at liberty to defend this action by  
delivering a statement of defence within \_\_\_\_\_ days after delivery of  
the plaintiff's statement of claim, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

(See *Ib.*, Form H, 6.)No. 117. Order under Order XI., No. 3 (leave to defend  
on payment into Court).In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
\_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_It is ordered that if the defendant \_\_\_\_\_ pay into Court within a week  
from the date of this order the sum of \$ \_\_\_\_\_, he be at liberty to defend  
this action by delivering a statement of defence within \_\_\_\_\_ days after  
delivery of the plaintiff's statement of claim, but that if that sum be not so  
paid the plaintiff be at liberty to sign final judgment for the amount  
indorsed on the writ of summons, with interest, if any, and costs, and  
that in either event the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

(See *Ib.*, Form H, 7.)**No. 118.** *Order under Order XI., No. 4 (leave to defend as to part on payment into Court, and as to residue unconditionally).*In the High Court of Justice,  
— Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of \$ \_\_\_\_\_, he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be at liberty to sign judgment for that sum and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim.

And it is ordered that in either event the statement of defence be delivered within \_\_\_\_\_ days after delivery of the plaintiff's statement of claim, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See *Ib.*, Form H, 8.)**No. 119.** *Order to Amend.*In the High Court of Justice,  
— Division.

[Name of the Judge or Master] in Chambers.]

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by \_\_\_\_\_, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See *Ib.*, Form H, 9.)**No. 120.** *Order for names of Partners.*In the High Court of Justice,  
— Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_

It is ordered that the \_\_\_\_\_ furnish the \_\_\_\_\_ with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the rule of the Supreme Court, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See *Ib.*, Form H, 10.)**No. 121.**      *Order for Particulars (General).*In the High Court of Justice,  
\_\_\_\_\_ Division.[*Name of the Judge or Master,*] in Chambers.Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_It is ordered that the plaintiff deliver to the defendant \_\_\_\_\_ an account  
in writing of the particulars of the plaintiff's claim in this action,  
and that unless such particulars be delivered within \_\_\_\_\_ days from the  
date of this order all further proceedings be stayed until the delivery  
thereof, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 11.)**No. 122.**      *Order for Particulars (Accident Case).*In the High Court of Justice,  
\_\_\_\_\_ Division.[*Name of the Judge or Master,*] in Chambers.Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_  
filed the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_It is ordered that the plaintiff deliver to the defendant an account in  
writing of the particulars of the injuries and expenses mentioned in the  
statement of claim, together with the time and place of the accident,  
and the particular acts of negligence complained of, and that unless  
such particulars be delivered within \_\_\_\_\_ days from the date of this  
order all further proceedings in this action be stayed until the delivery  
thereof, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 12.)**No. 123.**      *Order to Discharge or Vary Order on Appli-  
cation by Third Party.*In the High Court of Justice,  
\_\_\_\_\_ Division.[*Name of the Judge or Master,*] in Chambers.Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_  
filed the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_It is ordered that the order of \_\_\_\_\_ in this action dated the  
day of \_\_\_\_\_ 18 \_\_\_\_\_ be discharged [or varied by \_\_\_\_\_], and that the  
costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H. 13.)No. 124. *Order to Dismiss for want of Prosecution.*In the High Court of Justice,  
——— Division.

[Name of the Judge or Master,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_It is ordered that this action be, for want of prosecution, dismissed  
with costs, to be taxed and paid to the defendant by the plaintiff, and  
that the costs of this application be (*costs in the cause*)

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

———  
(See *Ib.*, Form H, 15.)No. 125. *Order for Production under Order 27, R. 4.*In the High Court of Justice,  
——— Division.

[Name of the Judge or Master,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.

Upon hearing \_\_\_\_\_

It is ordered that the \_\_\_\_\_ do, within 10 days after the service of  
this order, make discovery on oath of the documents which are or have  
been in \_\_\_\_\_ possession or power relating to any matters in question  
in this action and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

———  
(See *Ib.*, Form H, 16.)No. 126. *Order to Produce Documents for Inspection under  
Order 27, R. 10-15.*In the High Court of Justice,  
——— Division.

[Name of the Judge or Master,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_It is ordered that the \_\_\_\_\_ do, at all reasonable times, on reasonable  
notice, produce at the office of \_\_\_\_\_ solicitor, situate at \_\_\_\_\_ the  
following documents, namely \_\_\_\_\_ and that the \_\_\_\_\_ be at liberty  
to inspect and peruse the documents so produced and to take copies and  
abstracts thereof and extracts therefrom, at \_\_\_\_\_ expense, and that in  
the meantime all further proceedings be stayed, and that the costs of  
this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

(See *Ib.*, Form H, 17.)

No. 127. *Order for Production (Underwriters) under Order 27, R. 10-15.*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[*Name of the Judge or Master,*] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
 Plaintiff,  
 Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
 the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_

It is ordered that the \_\_\_\_\_ do produce and shew to the \_\_\_\_\_ upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips or policies, or relating to the insurance or the subject matter of the insurance on the ship \_\_\_\_\_ or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship \_\_\_\_\_ the cargo on board thereof and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence papers, and writings, (whether originals, duplicates, or copies respectively,) which now are in the custody, possession, or power, of the \_\_\_\_\_ his brokers, solicitors, or agents, in any way relating or referring to the matters in question in this action, with liberty for the \_\_\_\_\_ to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 21.)

No. 128. *Order for Issue of Notice claiming Contribution.*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[*Name of the Judge or Master,*] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
 Plaintiff,  
 Defendant.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed  
 the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_

It is ordered that the defendant \_\_\_\_\_ be at liberty to issue a notice claiming \_\_\_\_\_ over against \_\_\_\_\_, pursuant to the Rules of the Supreme Court Order 12, Rule 19.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.









(See *Ib.*, Form H, 87.)No. 139. *Garnishee Order (Attaching Debt).*In the High Court of Justice,  
— Division[*Name of the Judge or Master,*] in Chambers.Between Judgment Creditor,  
and Judgment Debtor.  
Garnishee.Upon hearing , and upon reading the affidavit of , filed  
the day of 18 , and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 , for the sum of \$ , on which judgment the said sum of \$ , remains due and unpaid.

And it is further ordered that the said garnishee attend the in Chambers (*or as the case may be*) on day the day of 18 , at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

And that the costs of this application be

Dated the day of 18 .

(See *Ib.*, Form H, 88.)No. 140. *Garnishee Order (Absolute).*In the High Court of Justice,  
— Division.[*Name of the Judge or Master, &c.,*] in Chambers.Between Judgment Creditor,  
and Judgment Debtor.  
Garnishee.Upon hearing , and upon reading the affidavit of filed  
the day of 18 , and whereby it was ordered  
that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 , for the sum of \$ , on which judgment the said sum of \$ remained due and unpaid.It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor (*or so much thereof as may be sufficient to satisfy the judgment debt*), and that in default thereof execution may issue for the same, and that the costs of this application be

Dated the day of 18 .

(See *Ib.*, Forms H, 89-51.)No. 141. *Order on Application to tax Solicitor's Bill of Costs.*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

In the matter of

Gentleman,  
One of the Solicitors of the Supreme Court.

Upon application of

It is ordered that the bill of fees, charges and disbursements delivered to the applicant by the above-named solicitor (or by the above solicitor to as the case may be) be referred to the \_\_\_\_\_ to be taxed, and that the said \_\_\_\_\_ do take an account of all sums of money received by the said solicitor of or on account of the applicant-

And it is ordered that the costs of this application be

Dated \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See *Ib.*, Form H, 42; R. S. O., c. 49, s. 3.)No. 142. *Order to try Action in County Court.*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the day of \_\_\_\_\_ 18 \_\_\_\_\_, and

It is ordered that this action be tried before the County Court of \_\_\_\_\_, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See R. Sup. C., April, 1880, Form H, 44; R. S. O., c. 50, s. 304.)

No. 143. *Order for Examination touching Means.*In the High Court of Justice,  
\_\_\_\_\_ Division.

Judge in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Judgment Creditor,  
Judgment Debtor.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the day of \_\_\_\_\_ 18 \_\_\_\_\_, and

It is ordered that the above named \_\_\_\_\_ do attend before the \_\_\_\_\_ in Chambers on the \_\_\_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ in the \_\_\_\_\_ noon, to be examined upon oath touching his means of paying the judgment debt, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See R. Sup. C., April, 1880, Form H, 48.)

No. 144. *Interpleader Order, No. 1.*In the High Court of Justice,  
----- Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_ Plaintiff,  
and between \_\_\_\_\_ Defendant,  
and \_\_\_\_\_ Claimant,  
and \_\_\_\_\_ RespondentUpon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_  
It is ordered that the claimant be barred, that no action be brought  
against the above-named [sheriff] \_\_\_\_\_, and that the costs of this  
application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

(See *Ib.*, Form H, 49.)No. 145. *Interpleader Order, No. 2.*In the High Court of Justice,  
----- Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_ Plaintiff,  
and \_\_\_\_\_ Defendant,  
and \_\_\_\_\_ Claimant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
\_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_  
It is ordered that the above-named claimant be substituted as defendant  
in this action in lieu of the present defendant, and that the costs of this  
application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

(See *Ib.*, Form H.No. 146. *Interpleader Order, No. 3.*In the High Court of Justice,  
----- Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_ Plaintiff,  
and between \_\_\_\_\_ Defendant,  
and the said \_\_\_\_\_ execution creditor, and \_\_\_\_\_ Claimant,  
the sheriff of \_\_\_\_\_ Respondents.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
\_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_



(See *Ib.*, Form H, 52.)

No. 148.

*Interpleader Order, No. 5.*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[*Name of the Judge or Master*] in Chambers.

Between \_\_\_\_\_ Plaintiff,  
 and \_\_\_\_\_ Defendant,  
 and between \_\_\_\_\_ Claimant,  
 and the said \_\_\_\_\_ execution creditor, and  
 the sheriff of \_\_\_\_\_ Respondents.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 day of \_\_\_\_\_ 18 \_\_\_\_\_, and

It is ordered that upon payment of the sum of \$ \_\_\_\_\_ into court by the  
 said claimant, or upon his giving security to the satisfaction of \_\_\_\_\_  
 for the payment of the same amount by  
 the claimant according to the directions of any order to be made herein,  
 the above-named sheriff withdraw from the possession of the goods seized  
 by him under the writ of fieri facias issued herein.

And it is further ordered that in the meantime, and until such payment  
 made or security given, the sheriff continue in possession of the goods,  
 and the claimant pay possession money for the time he so continues,  
 unless the claimant desires the goods to be sold by the sheriff, in which  
 case the sheriff is to sell them and pay the proceeds of the sale, after  
 deducting the expenses thereof and the possession money from this date,  
 into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an  
 issue in the High Court of Justice, in which the claimant shall be plain-  
 tiff and the execution creditor shall be defendant, and that the question  
 to be tried shall be whether at the time of the seizure by the sheriff the  
 goods seized were the property of the claimant as against the execution  
 creditor.

And is further ordered that this issue be prepared and delivered by the  
 plaintiff therein within \_\_\_\_\_ from this date, and be returned by the  
 defendant therein within \_\_\_\_\_ days, and be tried at \_\_\_\_\_.

And it is further ordered that the question of costs and all further  
 questions be reserved until after the trial of the said issue, and that no  
 action shall be brought against the sheriff for the seizure of the said  
 goods.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 53.)

No. 149.

*Interpleader Order, No. 6.*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[*Name of the Judge or Master*] in Chambers.

Between \_\_\_\_\_ Plaintiff,  
 and \_\_\_\_\_ Defendant,  
 and between \_\_\_\_\_ Claimant  
 and the said \_\_\_\_\_ execution creditor and  
 the sheriff of \_\_\_\_\_ Respondents.

The claimant and the execution creditor having requested and consented  
 that the merits of the claim made by the claimant be disposed of and  
 determined in a summary manner, now upon hearing \_\_\_\_\_ and upon  
 reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and

It is ordered that

And that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 54.)No. **150.** *Interpleader Order, No. 7.*In the High Court of Justice,  
— Division.

[Name of the Judge or Master] in Chambers.

Between  
and  
and between  
Plaintiff,  
Defendant,  
Claimant,and the said execution creditor and Respondents  
the sheriff ofUpon hearing , and upon reading the affidavit of filed  
the day of 18 , and

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of fieri facias issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale, (after deducting the expenses thereof, and rent, if any,) the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be

Dated the day of 18 .

(See *Ib.*, Form H, 55.)No. **151.** *Order dismissing Motion (Generally).*In the High Court of Justice,  
— Division.

[Name of the Judge or Master] in Chambers.

Between  
and  
Defendant.  
Plaintiff,Upon hearing , and upon reading the affidavit of filed  
the day of 18 , and

It is ordered that the application of be dismissed, (if the dismissal is with costs add), with costs to be taxed and paid by the to the

Dated the day of 18

## APPENDIX (I).

## No. 152. FORMS OF JUDGMENT.

*Default of Appearance or Defence in case of Liquidated Demand.*

(See R. Sup. C., Appendix (D), Form 1.)

In the High Court of Justice,  
\_\_\_\_\_ Division.

[18 .]

Between A. B., Plaintiff,  
and  
C. D. and E. F., Defendants.

The \_\_\_\_\_ day of \_\_\_\_\_ 18 .

The defendants [or the defendant C. D.] not having appeared herein [or not having delivered any statement of defence], it is this day adjudged that the plaintiff recover against the said defendant \$ \_\_\_\_\_, and costs to be taxed.

No. 153. *Judgment in Default of Appearance or Defence where the Demand is Liquidated (Fixed costs).*

[Title, &amp;c.]

The \_\_\_\_\_ day of \_\_\_\_\_, 18 .

The defendant \_\_\_\_\_ not having (appeared to the writ of summons or delivered any statement of defence or demurrer) it is this day adjudged that the plaintiff recover against the said defendant \$ \_\_\_\_\_ and \$ \_\_\_\_\_ costs.

No. 154. *Judgment in Default of Appearance in action for Recovery of Land.*(See *Ib.*, Form 2.)

[Title, &amp;c.]

The \_\_\_\_\_ day of \_\_\_\_\_ 18 .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned.

No. 155. *Judgment in Default of Defence in action for Recovery of Land.*

[Title, &amp;c.]

The \_\_\_\_\_ day of \_\_\_\_\_, 18 .

No statement of defence having been delivered herein, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim herein mentioned and described as

No. 156. *Judgment in Default of Defence in Action for Recovery of Land with Damages.*

(See Order 15, R. 8.)

[Title, &c.]

The day of , 18 .

The defendant not having delivered any statement of defence, it is this day adjudged that the plaintiffs recover possession of the land in the statement of claim herein mentioned, and described as , in the County of , and costs to be taxed, and it is further adjudged that the plaintiffs recover against the defendant damages to be assessed.

Certificate for \$ , taxed costs, dated the day of , 18 .

(See R. Sup. C., April 1880, Form D, 8.)

No. 157. *Interlocutory Judgment in Default of Appearance or Defence where Demand Unliquidated.*

[Title, &c.]

The day of 18 .

No appearance having been entered to the writ of summons (or no statement of defence or demurrer having been delivered by the defendant) herein;

It is this day adjudged that the plaintiff recover against the defendant the value of the goods or damages, or both, as the case may be, to be assessed.

(See *Ib.*, Form D, 9.)

No. 158. *Judgment after Appearance and Order under Order XI., Rule 1.*

[Title, &c.]

The day of 18 .

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of , dated day of 18 , obtained leave to sign judgment under the Rule of the Supreme Court, No. 87, for (*recite order*). It is this day adjudged that the plaintiff recover against the defendant \$ and costs to be taxed.

The above costs have been taxed and allowed at \$ , as appears by a Master's Certificate dated the day of 18 .

No. 159. *Judgment in Default of Appearance or Defence, after Assessment of Damages.*

(See *Ib.*, Form 3.)

[Title, &c.]

The day of , 18 .

No appearance having been entered to the writ of summons [or no statement of defence or demurrer having been delivered by the defendant] herein, and the damages which the plaintiff was entitled to recover having been assessed at \$ , as by dated the

18 , appears, it is adjudged that the plaintiff recover \$ and costs to be taxed.

(See *Ib.*, Form D, 10.)

No. 160. *Judgment after Trial by Court without Jury.*  
(No. 1.)

[Title, &amp;c.]

The                    day of                    18 .  
This action having on the                    day of                    18 , been tried before  
and the said                    on the                    day of                    18 , having ordered  
that judgment be entered for the                    for \$                    ,  
It is this day adjudged that the                    recover from the                    \$  
and costs to be taxed.

The above costs have been taxed and allowed at \$                    , as appears by  
a taxing officer's Certificate dated the                    day of                    18 .

No. 161. *Judgment at Trial by Judge without a Jury.*  
(No. 2.)

(See *Ib.*, Form 4.)

[Title, &amp;c.]

The                    day of                    , 18 .  
Judgments. The action coming on for trial [the                    day of                    and]  
this day, before                    in the presence of counsel for the plain-  
tiff and the defendants [or, if some of the defendants do not appear, for  
the plaintiff and the defendant C. D., no one appearing for the defend-  
ants E. F. and G. H., although they were duly served with notice of trial  
as by the affidavit of                    filed the                    day of                    appears,]  
upon hearing read the pleadings and what was alleged by counsel on  
both sides, this Court doth declare, &c.  
And this Court doth order and adjudge, &c.

No. 162. *Judgment after Trial by a Jury.*

(See *Ib.*, Form 5.)

[Title, &amp;c.]

The                    day of                    , 18 .  
The action having on the 12th and 13th November, 18                    , been tried  
before the Honourable Mr. Justice                    and a special jury of the  
county of                    , and the jury having found [*state findings as in*  
*Judge's or officer's certificate*], and the said Mr. Justice                    having  
ordered that judgment be entered for the plaintiff for \$                    and costs of  
suit [*or as the case may be*]: Therefore it is adjudged that the plaintiff  
recover against the defendant \$                    and \$                    for his costs of  
suit [or that the plaintiff recover nothing against the defendant, and  
that the defendant recover against the plaintiff \$                    for his costs of  
defence, or as the case may be.]

No. 163. *Judgment after Trial before Referee.*

(See *Ib.*, Form 6.)

[Title, &amp;c.]

The                    day of                    , 18 .  
The action having on the 27th November, 18                    , been tried before X. Y.,  
Esq., an official [*or special*] referee; and the said X. Y., having found  
[*state substance of referee's certificate*], it is this day adjudged that

(See R. Sup. C., April 1880, Form D, 6a)

No. 164. *Judgment after Trial of Questions of Account by Referee.*

[Title, &c.]

The day of 18 .

The questions of account in this action having been referred to

and he having found that there is due from the to the the sum of \$ and directed that the do pay the costs of the reference.

It is this day adjudged that the recover against the said \$ and costs to be taxed.

The above costs have been taxed and allowed at \$ , as appears by a taxing officer's Certificate dated the day of 18 .

No. 165. (See *Ib.*, Form D, 19 ; Order 40.)

*Judgment on Motion Generally.*

[Title, &c.]

The day of 18 . (Date of order of Court.)

This action having on the day of 18 come on before the Court on motion for judgment on behalf of the , and the Court after hearing counsel for the having ordered that (as in order of Court.)

It is this day adjudged that the recover against the the sum of \$ and costs to be taxed.

The above costs have been taxed and allowed at \$ , as appears by a taxing officer's Certificate dated the day of 18 .

(See *Ib.*, Form D, 11.)

No. 166. *Judgment in pursuance of order. (For use where leave had been given to sign judgment unless some condition should be complied with.)*

The day of 18 .

Pursuant to the order of dated 18 whereby it was ordered and default having been made

It is this day adjudged that the plaintiff recover against the said defendant \$ and costs to be taxed.

The above costs have been taxed and allowed at \$ , as appears by a taxing officer's Certificate dated the day of 18 .

No. 167. *Judgment in pursuance of order. (For use where leave had been given to sign judgment unless money should be paid into Court).*

[Title, &c.]

The day of 18 .

Pursuant to the order of dated the day of 18 , whereby it was ordered that unless \$ be paid into court by the defendant within a week, the plaintiff be at liberty to sign final judgment for amount indorsed on the writ of summons with interest, if any, and costs; and the said defendant not having paid into court the said sum of \$ , as conditioned by the said order, it is this day adjudged that the plaintiff recover against the defendant \$ and \$ for costs.

Certificate for costs dated the day of 18 .

E. F.,  
Plaintiff's Solicitor.

(See *Ib.*, Form D, 12.)**No. 168.** *Judgment on Certificate of Clerk of County Court.*

[Title, &amp;c.]

The            day of            18            .

This action having been ordered to be tried in the County Court of  
and the Clerk of that Court having certified that the result was  
It is this day adjudged that            recover against            \$            and  
costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by  
a taxing officer's Certificate dated the            day of            18            .

(See *Ib.*, Form D, 13.)**No. 169.** *Judgment for Defendant's Costs on Discontinuance.*

[Title, &amp;c.]

The            day of            18            .

The plaintiff having by a notice in writing dated the            day of  
18            , Wholly discontinued this action, [or withdrawn his  
claim in this action for or withdrawn so much of his claim in this  
action as relates to—*or as the case may be.*]

It is this day adjudged that the defendant recover against the plaintiff  
costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by  
a taxing officer's Certificate dated the            day of            18            .

**No. 170.** (See *Ib.*, Form D, 14.)*Judgment for Plaintiff's Costs after Confession of Defence.*

[Title, &amp;c.]

The            day of            18            .

The defendant in his statement of defence herein having alleged a  
ground of defence which arose after the commencement of this action,  
and the plaintiff having on the            day of            18            delivered a  
confession of that defence.

It is this day adjudged that the plaintiff recover against the defendant  
costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by  
a taxing officer's Certificate dated the            day of            18            .

**No. 171.** (See *Ib.*, Form D, 15.)*Judgment for Costs after Acceptance of Money paid into Court.*

[Title, &amp;c.]

The            day of            18            .

The defendant having paid into court in this action the sum of \$  
in satisfaction of the plaintiff's claim, and the plaintiff having by his notice  
dated the            day of            18            , accepted that sum in satisfaction of  
his entire cause of action, and the plaintiff's costs herein having been  
taxed, and the defendant not having paid the same within 48 hours  
after the said taxation ;

It is this day adjudged that the plaintiff recover against the defendant  
costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by  
a taxing officer's Certificate dated the            day of            18            .

No. 172. (See *Ib.*, Form D, 18.)

*Judgment on Motion after Trial of Issue.* (See Order 32.)

[Title, &c.]

The day of 18 . (Date of order of Court.)

The (Issues or Questions) of fact arising in this action by the order dated the day of ordered to be tried before having on the day of been tried before , and the having found , Now on motion before the Court for judgment on behalf of the , the Court having

It is this day adjudged that the recover against the the sum of \$ and costs to be taxed.

The above costs have been taxed and allowed at \$ , as appears by a taxing officer's Certificate dated the day of 18 .

No. 173. *Form of Judgment on Præcipe for Sale or Foreclosure WITH REFERENCE AS TO INCUMBRANCES, &c., and orders for Immediate Payment and Delivery of Possession.*

[Title, &c.]

1. Upon the application of the plaintiff under Rule No. 78, of the rules of the Supreme Court, and upon reading the writ of summons issued in this action, and indorsed under Rule No. 17, and an affidavit of, &c., filed, &c., and an affidavit of, &c., filed, &c., of service of the said writ on the defendant, and no appearance having been entered in the said action as by the (books in the office of the at ) appears;

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for redemption or sale (or redemption or foreclosure), and that for these purposes the cause be referred to the Master of this Court at

3. (Where judgment is for immediate payment add, It is further ordered that the defendant do forthwith after the making of the Master's report pay to the plaintiff what shall be found due to him for principal money, interest and costs at the date of the said report, and upon payment of the amount due to him (where judgment is for sale add, before the sale hereinbefore directed shall have taken place) that the plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto.)

4. (Where judgment is for immediate possession add, It is further ordered that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the lands and premises in question, in this cause, or of such part thereof as may be in the possession of the said defendant.)

No. 174. *Form of Judgment for Foreclosure or Sale, ACCOUNT TAKEN BY REGISTRAR, and Orders for Immediate Payment and Delivery of Possession.*

[Title, &c.]

1. Upon the application of the plaintiff under Rule No 78, of the rules of the Supreme Court, and upon reading the writ of summons issued in this action, and indorsed under Rule No. 17, and an affidavit of, &c., filed, &c., and an affidavit of, &c., filed, &c., of service of the said writ on the defendant, and no appearance having been entered in the said action as by the (books in the office of the at ) appears;

2. This Court finds that the subsequent interest at the rate of per centum per annum on the sum of principal money secured by the indenture of mortgage in the pleadings mentioned, up to the day of next, being the time appointed for payment as hereinafter mentioned, amounts to and that the costs of the plaintiff amount to which said subsequent interest and costs being added to the sum of claimed by the indorsement on the writ served

- on the defendant                    make together the sum of
3. And upon the said defendant paying the said sum of                    into the bank                    at the                    between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the                    day of                    next, to the joint credit of the plaintiff and the Referee in Chambers [*where order for payment granted insert, or in case the plaintiff shall (where judgment is for sale add, before the sale hereinafter directed shall have taken place) recover the amount due to him under the order for payment hereinafter contained*], it is ordered that the said plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto;
4. But in default of the said defendant making such payment by the time aforesaid, it is ordered (*where judgment is for foreclosure, after "it is ordered," say "that the said defendant do stand absolutely debarred and foreclosed, of and from all equity of redemption in and to the said premises;" where judgment is for sale, then after the words "it is ordered," say "that the said premises be sold, with the approbation of the Master of this Court at*).
5. (*If judgment is for foreclosure omit this section.*) And it is ordered that the purchasers do pay their purchase money into Court, to the credit of this cause, and that the same when so paid in be applied in payment of what has been found due to the said plaintiff together with subsequent interest and subsequent costs, to be computed and taxed by the said Master, and that the balance do abide the further order of the Court.
6. (*Where judgment is for immediate payment add:*) It is further ordered that the defendant                    do forthwith pay to the plaintiff the sum of                    being the amount due to the plaintiff at the date hereof for principal money, interest and costs.
7. (*Where judgment is for immediate possession add:*) And it is further ordered that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the mortgaged premises, or of such part thereof as may be in the possession of the said defendant .

No. 175.                    *Form of Judgment for Redemption, issued by a local Master.*

[Title, &c.]

1. Upon the application of the plaintiff, under Rule No. 78, of the rules of the Supreme Court, and upon reading the writ of summons issued in this action, and indorsed under Rule No. 16, and an affidavit of, &c., filed, &c., and an affidavit of, &c., filed, &c., of service of the said writ on the defendant, and no appearance having been entered in the said action, as by the (books in the office of the                    at                    ) appears;
2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for the redemption of the premises in question, and that for this purpose the cause be referred to the Master at
3. And it is ordered that upon the plaintiff paying to the defendant what shall be found due to him, or in case nothing shall be found due to the defendant then forthwith after the confirmation of the said Master's report, that the defendant do reconvey the said mortgaged premises, and deliver up all documents relating thereto.
4. It is further ordered that in case the plaintiff shall make default in payment as aforesaid of what may be found due to the defendant that the plaintiff's action do stand dismissed out of this Court, with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.
5. It is further ordered that in case nothing shall be found due from the plaintiff to the defendant that the defendant do pay the plaintiff his costs of this suit forthwith after taxation thereof, and in case any balance shall be found due from the defendant to the plaintiff that the defendant do pay such balance to the plaintiff forthwith after the confirmation of the Master's report.

No. 176. *Form of Judgment for Administration by a  
Local Master.*

(See Order 1, R. 3.)

1. Upon the application of the above-named plaintiff in the presence of the solicitor for the Defendant [or no one appearing for the defendant although duly notified as by affidavit filed appears], and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant or all parties].

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the administration and final winding up of the personal [and real] estate of \_\_\_\_\_ and for the adjustment of the rights of all parties interested therein, by the Master of this Court at \_\_\_\_\_.

3. And it is ordered that all balances which may be found due from the Plaintiff or Defendant [or any or either of them] to the said estate be, forthwith after the same shall have been ascertained as aforesaid, paid into Court to the credit of this cause, subject to the further order of the Court.

4. And it is ordered that such personal [and real] estate, or such parts thereof as the said Master may hereafter direct, be sold, as the said Master may direct, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court.

5. It is further ordered that the Master do execute conveyances for any infant parties who by reason of their tender years are unable to execute the same.

No. 177. *Form of Judgment for Partition or Sale  
by a County Court Judge or a Local Master.*

(See Order 1, R. 3.)

1. Upon the application of the above-named plaintiff in the presence of the solicitor for the defendant [or no one appearing for the defendant although duly notified as by affidavit filed appears] and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant or all parties.]

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the partition or sale of the lands and premises in the said affidavits mentioned, and for the adjustment of the rights of all parties interested therein, or for a partition of part and sale of the remainder of the said lands as may be most for the interest of the parties entitled to share therein [by the Master of this Court at \_\_\_\_\_].

3. And it is further ordered that the said lands, or such part thereof as the said Master shall think fit, be sold, with the approbation of the said Master, freed from the claims of such of the incumbrancers thereon (if any) whose claims were created by parties entitled to the said lands before the death of the said testator [or, intestate] as shall have consented to such sale, and subject to the claims of such of them as shall not have consented [and freed also from the dower of \_\_\_\_\_ as the case may be], and that the said Master \_\_\_\_\_ do execute the conveyances on behalf of such of the infant parties as, by reason of their tender years, are unable to execute the same, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court.

4. And it is further ordered that, in the event of a partition of the whole of the said land, or in the event of a partition of a part and the proceeds of the sale of the remainder being insufficient to pay the costs in full, the costs, or so much thereof as remains unpaid, be borne and paid by the said parties according to their shares and interests in the said lands [if there be any infant parties interested in the estate add] and that the proportion of the said costs payable by the infant parties respectively be, and the same is hereby declared to be, a lien on their respective shares, and that the plaintiff do pay the guardian of the infant defendants his costs of this suit and that the same be added to his own costs.

No. 178.

*Certificate of Taxation.*

[Title, &amp;c.]

I certify that the costs of the \_\_\_\_\_ have been taxed and allowed  
at \$ \_\_\_\_\_

Dated &amp;c. \_\_\_\_\_

No. 179.

(See R. Sup. C., Appx. B, Form 15.)

*Form of Certificate of Officer after Trial by a Jury.*

[Titles &amp;c.]

I certify that this action was tried before the Honourable Mr. Justice  
and a special jury of the county of \_\_\_\_\_ on the  
and \_\_\_\_\_ days of October, 188 \_\_\_\_\_.

The Jury found [*state findings*].

(*If the Judge gives instructions as to the judgment thereon, add*), And the  
said Judge directed, &c., [*as the case may be.*]

Dated, &amp;c. \_\_\_\_\_



by an order of our High Court of Justice dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, were ordered to be paid by the said \_\_\_\_\_ to \_\_\_\_\_ and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of 6 per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and that you have the said sum and interest before the Justices of our High Court at Toronto, immediately after the execution hereof, to be rendered to the said \_\_\_\_\_. And in what manner you shall have executed this our writ make appear to us immediately after the execution hereof. And have there then this writ.

Witness, &c.  
The \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

*Indorsements.*

Levy \$ \_\_\_\_\_ and \$ \_\_\_\_\_ for costs of execution, &c., and also interest on \$ \_\_\_\_\_ at 6 per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_ agent for \_\_\_\_\_ of \_\_\_\_\_ solicitor for the \_\_\_\_\_ The \_\_\_\_\_ is a \_\_\_\_\_ and resides at \_\_\_\_\_ in your bailiwick.

No. 182. *Writ of Venditioni Exponas.*  
(See R. Sup. C., Appendix F, Form 3.)

[Title, &c.]

Victoria, &c.

To the sheriff of \_\_\_\_\_ greeting.

Whereas by our writ we lately commanded you that of the goods and chattels (*making the necessary variations of this form throughout in the case of lands and tenements*) of *C. D.* [*here recite the fieri facias to the end*]. And on the \_\_\_\_\_ day of \_\_\_\_\_ you returned to our Justices in the \_\_\_\_\_ Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said *C. D.* to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore, we being desirous that the said *A. B.* should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said *C. D.*, by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before our Justices aforesaid, at \_\_\_\_\_ immediately after the execution thereof, to be paid to the said *A. B.* And have there then this writ.

Witness, &c., \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

No. 183. *Writ of Possession.*  
(See *Ib.*, Form 7.)

[Title, &c.]

Victoria,, &c., \_\_\_\_\_ to the sheriff of \_\_\_\_\_, greeting.

Whereas lately in our High Court of Justice, by a judgment of the \_\_\_\_\_ Division of the same Court [*A. B.* recovered] or [*E. F.* was ordered to deliver to *A. B.*] possession of all that \_\_\_\_\_ with the appurtenances in your bailiwick: Therefore, we command you that you enter the same, and without delay cause the said *A. B.* to have possession of the said land and premises with the appurtenances, and that you defend and keep him and his assigns in peaceable and quiet possession when and as often as any interruption may or shall, from time to time, be given or offered to them or any of them. Witness, etc.

No. 184.

*Writ of Delivery.*(See *Ib.*, Form 8.)

[Title, &amp;c.]

Victoria, &c., to the sheriff of  
 greeting: We command you, that without delay you cause the following  
 chattels, that is to say [*here enumerate the chattels recovered by the*  
*judgment for the return of which execution has been ordered to issue*],  
 to be returned to *A. B.*, which the said *A. B.* lately in our  
 recovered against *C. D.* [*or C. D. was ordered to deliver to the said*  
*A. B.*] in an action in the Division of our said Court.\* And  
 we further command you, that if the said chattels cannot be found in  
 your bailiwick, you distrain the said *C. D.* by all his lands and chattels  
 in your bailiwick, so that neither the said *C. D.* nor any one for him do  
 pay hands on the same until the said *C. D.* render to the said *A. B.* the  
 said chattels; and in what manner you shall have executed this our  
 writ make appear to the Justices of the Division of our High  
 Court of Justice at Toronto, immediately after the execution hereof, and  
 have you there then this writ. Witness, etc.

No. 185. *The Like, but instead of a Distress until the Chattel is re-*  
*turned, commanding the Sheriff to levy on the Defendant's*  
*goods the assessed Value of it.*

[Proceed as in the preceding form until the\*, and then thus:]

And we further command you that if the said chattels cannot be found in  
 your bailiwick, of the goods and chattels of the said *C. D.* in your baili-  
 wick you cause to be made \$ [the assessed value of the chat-  
 tels,] and in what manner you shall have executed this our writ make  
 appear to the Judges of the Division of our High Court of  
 Justice at Toronto, immediately after the execution hereof, and have you  
 here then this writ. Witness, etc.

No. 186.

*Writ of Attachment.*(See *Ib.*, Form 9.)

[Title, &amp;c.]

Victoria, etc.,

To the sheriff of , greeting:

We command you to attach *C. D.* so as to have him before us in the  
 Division of our High Court of Justice there to answer to  
 us, as well touching a contempt which he it is alleged hath committed  
 against us, as also such other matters as shall be then and there laid to  
 his charge, and further to perform and abide such order as our said  
 Court shall make in this behalf, and hereof fail not, and bring this writ  
 with you. Witness, etc.

No. 187.

*Writ of Sequestration.*(See *Ib.*, Form 10.)

[Title, &amp;c.]

Victoria, etc.,

To the sheriff of , greeting:

Whereas lately in the Division of our High Court of Justice  
 in a certain action there depending, wherein *A. B.* is plaintiff and *C. D.*  
 and others are defendants [*or, in a certain matter there depending intitled*  
*"In the matter of E. F., as the case may be"*] by a judgment [*or order as*  
*the case may be*] of our said Court made in the said action [*or matter*], and  
 bearing date the day of 18 , it was ordered  
 that the said *C. D.* should [pay into Court to the credit of the said action the  
 sum of \$ ; *or, as the case may be.* Know ye, therefore, that we have  
 given, and] by these presents do give, to you full power and authority to enter  
 upon all the lands, tenements and real estate whatsoever of the said *C.*  
*D.*, and to collect, receive and sequester into your hands, not only all the  
 rents and profits of his said lands, tenements and real estate, but also all  
 his goods, chattels and personal estates whatsoever; and therefore we com-  
 mand you, that you do at certain proper and convenient days and hours,  
 go to and enter upon all the lands, tenements and real estates of the said

*C. D.*, and that you do collect, take and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C. D.* shall pay into Court, to the credit of the said action, the sum of \$ [or, as the case may be,] clear his contempt, and our said Court make other order to the contrary. Witness, &c.

No. 188. *Delivery or Assessed Value of Chattels.*

(See R. Sup. C., April 1880, Form F, 11.)

[Title, &c.]

Victoria, etc., to the sheriff of greeting.

We command you that without delay you cause to be returned to the following chattels, namely (*Enumerate chattels recovered by judgment for the return of which execution has been order to issue*), which the said [ ] lately (recovered against or was ordered to deliver to the said,) in an action in our High Court of Justice.

And we further command you that if the said chattels cannot be found in your bailiwick then of the goods and chattels of the said [ ] in your bailiwick you cause to be made, (*the assessed value of the chattels*) And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof. And have there then this writ.

Witness, &c.

*Indorsements.*

If the chattels cannot be found in your bailiwick, levy \$ [ ] the assessed value thereof, and interest thereon at 6 per centum per annum from the [ ] day of [ ] 18 until payment, besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by  
of  
agent for  
of  
solicitor to the [ ] who reside at [ ]

The defendant is a  
and resides at  
in your bailiwick.

No. 189. *Warrant for arrest of a defaulting witness.*

Province of Ontario. }  
County of [ ] }

Between *A. B.*, Plaintiff,  
and  
*C. D.*, Defendant.

To *E. F.*

Whereas proof has been made before me that *H. N.* was duly subpoenaed to give evidence on behalf of the plaintiff (*or as the case may be*), in the above cause at the sittings of the Court of Assize (*or as the case may be*), at Toronto (*or as the case may be*, which commenced on the [ ] day of [ ] 18 ); that the presence of the said *H. N.*, is material to the ends of Justice; and that the said *H. N.* has failed to attend in accordance with the requirements of the subpoena.

These are therefore to command you to take the said *H. N.*, and to bring and have him before me at the said sittings, or before such other Judge as may be presiding thereat, there to testify what he may know concerning the matters in question in the said cause, and that you detain him in your custody until he shall have given his evidence, or until the said sittings shall have ended, or until other order be made by the Court concerning him.

Given under my hand, this [ ] day of [ ]  
A.D. 18 [ ] , at [ ]

J. J. M.,





An Act to consolidate the Superior Courts; establish a uniform system of pleading and practice; and make further provision for the due Administration of Justice.

*(The English Judicature Acts are :*

36 & 37 Vic., c. 66 [1873], "Supreme Court of Judicature Act."  
 38 & 39 Vic., c. 77 [1875], amending and extending same, and containing the Rules of Court and Forms.  
 40 Vic., c. 9 [1877], amending Judicature Acts of 1873 and 1875.  
 39 & 40 Vic., c. 59 [1876], "The Appellate Jurisdiction Act, 1876."  
 42 & 43 Vic., c. 59 [1879], "Civil Procedure Acts Repeal Act, 1879."  
 42 & 43 Vic., c. 78 [1879], "The Supreme Court of Judicature Officers' Act, 1879."

*The Irish Judicature Acts are :*

40 & 41 Vic., c. 57 [1877], "Supreme Court of Judicature Act (Ireland), 1877."  
 41 & 42 Vic., c. 27, amending same.

*The principal Ontario Acts referred to are :*

R. S. O., c. 38, "The Court of Appeal Act."  
 R. S. O., c. 39, "The Superior Courts of Law Act."  
 R. S. O., c. 40, "The Chancery Act."  
 R. S. O., c. 49, "The Administration of Justice Act."  
 R. S. O., c. 50, "The Common Law Procedure Act."

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "The Ontario Judicature Act Short title.  
 5 1881."

2. This Act, except any provision thereof which is declared <sup>Commence-</sup> to take effect on the passing of this Act, or at any other speci- <sub>ment of Act.</sub> fied date, shall commence and come into operation on the 22nd day of August, 1881. (*See Imp. Act of 1873, s. 2.*)

NOTE.—The references at the end of any clause or order mean as follows:—

"R. S. O." denotes Revised Statutes of Ontario.

"R. Sup. C., 1875," or "R. Sup. C." alone, denote the Rules of the Supreme Court contained in the Schedule to the Imperial Act of 1875, c. 77.

"R. Sup. C." with any other date than simply the year 1875, denotes the Rules of the Supreme Court subsequent to the Act of 1875, issued by the Judges of the Supreme Court under the authority of that Act.

"G. O. Chy." denotes the General Orders of the Court of Chancery for Ontario.

It is, of course, not intended that the foot-notes or the references at the end of each section should form part of the Act.

## PART I.

## CONSTITUTION OF SUPREME COURT.

Union of exist-  
ing Courts  
into one Su-  
preme Court.

3. From and after the time appointed for the commencement of this Act, the several Courts hereinafter mentioned (that is to say) the Court of Appeal, the Court of Queen's Bench, the Court of Chancery, and the Court of Common Pleas, shall be united and consolidated together, and shall constitute, under 5 and subject to the provisions of this Act, one Supreme Court of Judicature for Ontario. (*See Imp. Act of 1873, s. 3.*)

(2) The Supreme Court shall consist of two permanent divisions. The said Courts of Queen's Bench, Chancery and Common Pleas shall constitute one of such divisions, 10 and shall be called "The High Court of Justice for Ontario." The said Court of Appeal shall constitute the other division, and shall be called "The Court of Appeal for Ontario." (*See Imp. Act of 1873, s. 4.*)

(3) The Court of Queen's Bench shall thereafter be called 15 the Queen's Bench Division of the High Court; the Court of Chancery shall be called the Chancery Division thereof; and the Court of Common Pleas shall be called the Common Pleas Division thereof; the Judges of the said three Courts or Divisions shall 20 be called Justices of the High Court. (*See Imp. Act of 1873, s. 31; Imp. Act of 1877, s. 4.*)

(4) The persons hereafter appointed to fill the places of the Chief Justice of the Queen's Bench, the Chancellor of Ontario, and the Chief Justice of the Common Pleas, 25 and their successors respectively, are to be appointed by the authority mentioned in the British North America Act, and with the same respective titles as heretofore. (*See Imp. Act of 1873, s. 5; B. N. A. Act, s. 96; R. S. O. c. 38, s. 4; c. 39, s. 8; c. 40, s. 5.*) 30

(5) Save as in this Act is otherwise expressly provided, all the Judges hereinbefore mentioned, and their successors, shall have in all respects equal power, authority, and jurisdiction. (*See Imp. Act of 1873, s. 5.*) 35

(6) The Chief Justice of the Queen's Bench shall be the President of the Queen's Bench Division, the Chancellor shall be the President of the Chancery Division, and the Chief Justice of the Common Pleas shall be the President of the Common Pleas Division. 40 (*See Imp. Act of 1873, s. 31.*)

(7) Such one of the said three Judges as at the time of th<sup>e</sup> passing of this Act may be entitled to precedence ove<sup>r</sup> the other two, shall be the first President of the High Court; and on his ceasing to be President, the Pre- 45 sident of the said High Court shall be that one of the Presidents of the Queen's Bench, Chancery and Common Pleas Divisions, who, for the time being, is first

in order of seniority. (See Imp. Act of 1873, s. 5; Imp. Act of 1875, s. 6; R. S. O. c. 38, s. 6; 37 Vic. c. 7, s. 5.)

5 (8) Upon any vacancy happening among the Judges, the Judge appointed to fill such vacancy is (subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto) to become and be a member of the same Division to which the Judge whose place has become vacant belonged. (Imp. Act of 1873, s. 31.)

10 (9) Nothing in this Act shall prevent, or shall be construed as intended to prevent, the transfer of any Judge of any of the said Divisions from one to another of the said Divisions. (See Imp. Act of 1873, s. 31.)

15 4. The Court of Appeal for Ontario, at present existing, is continued, under that name, and shall, as heretofore, consist of a Chief Justice, to be called the Chief Justice of Ontario, and three other Judges, to be called Justices of Appeal, 20 as in the Act respecting the Court of Appeal, (R. S. O. cap. 38,) mentioned; and the said Judges of the Courts of Queen's Bench, Chancery and Common Pleas, and their successors the Justices of the High Court, shall be *ex officio* Judges of the Court of Appeal, for the same purposes and with the same 25 duties and powers as by the said Act is provided with respect to the Judges of the Courts of Queen's Bench, Chancery, and Common Pleas. (See Imp. Act of 1875, s. 4; (R. S. O., c. 38), ss. 3, 10.)

Existing Court of Appeal, continued.

30 5. The oath to be taken by the Judges to be hereafter appointed shall be the following:—"I do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as ; so help me God."

Oath of Office.

35 The oath is to be administered to the Chief Justices and the Chancellor by the Lieutenant-Governor in Council, and to the Justices of the High Court, other than the Chief Justices, in presence of the President of the High Court; and to the Justices of the Court of Appeal in open Court by the Chief Justice of Ontario, unless the Lieutenant-Governor in any of 40 such cases shall otherwise direct. (See R. S. O. c. 38, s. 7; c. 39, s. 9; c. 40, s. 7; Imp. Act 31 and 32 Vic. c. 72; Imp. Act of 1873, s. 9; Imp. Act of 1875, s. 5.)

45 6. Every existing Judge is, as to all matters within the legislative authority of this Province, to remain in the same condition as if this Act had not passed; and, subject to the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform if this Act had not passed. (See Imp. Act of 1873, s. 11.)

Saving of rights and obligations of existing Judges.

50 7. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice shall have been imposed or conferred by any statute or law upon the Judges or any Judge of any of the Courts united and consolidated as aforesaid, (save as hereinafter mentioned) every Judge of the said High Court shall be capable of performing and exercising

Provision for former extraordinary duties of Judges.

and shall be liable to perform and empowered to exercise every such duty, authority and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. (*See* 5 Imp. Act of 1873, s. 12.)

(2) Any such duty, authority, or power, imposed or conferred in any such case as aforesaid, upon the Chief Justice of Ontario, the Chancellor, the Chief Justice of the Queen's Bench, or the Chief Justice of the 10 Common Pleas, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed. (*See* Imp. Act of 1873, s. 12.)

Seal of Court. 8. The Lieutenant-Governor in Council may from time to 15 time, determine and declare the seal to be used in the Supreme Court and by which its proceedings shall be certified and authenticated; and until there is a seal for the Supreme Court, the seals now in use in and for the existing Courts may be used in and for the respective Divisions of the High Court, and in and 20 for the Court of Appeal respectively. (*See* Imp. Act of 1873, s. 61; R. Sup. C., April 1880, R. 45; R. S. O. c. 40. s. 3.)

## PART II.

### JURISDICTION

#### OF HIGH COURT.

Jurisdiction of High Court of Justice. 9. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, shall have the 25 jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, the Court of Queen's Bench, the Court of Chancery, the Court of Common Pleas, and Courts of Assize, Oyer and Terminer, and Gaol Delivery (whether created by Commission or otherwise), and shall be deemed to be and shall be a continuation of the 30 said Courts respectively (subject to the provisions of this Act) under the name of the High Court of Justice aforesaid. (*See* Imp. Act of 1873, s. 16; R. S. O. c. 41, s. 1 *et seq.*; 36 Vic. c. 8, ss. 52 and 55, Ont.)

(2) The jurisdiction aforesaid shall include (subject to the 35 exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, when 40 acting as Judges or a Judge in pursuance of any statute or law; and all powers given to any such Court, or to any such Judges or Judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the 45 jurisdiction. (*See* Imp. Act of 1873, s. 16.)

10. From and after the commencement of this Act the several jurisdictions vested in the said High Court of Justice, shall cease to be exercised except in the name of the said High Court of Justice as provided by this Act, save as otherwise in this Act provided. (See Imp. Act of 1873, s. 22; section 80, *post*, &c.)

Transfer of pending business.

11. In all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected, at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act. (See Imp. Act of 1873, s. 22.)

Provision as to pending business.

(2) Every judgment, decree, rule, or order of any Court whose jurisdiction is hereby vested in the High Court of Justice, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged, by the High Court of Justice, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court; and all causes, matters, and proceedings whatsoever, which shall be pending in any of the Courts whose jurisdiction is so vested as aforesaid at the commencement of this Act, shall be continued and concluded in and before the High Court of Justice; and the said High Court shall have jurisdiction for so continuing and concluding matters criminal as well as civil. (See Imp. Act of 1873, s. 22; Order 60, *post*.)

(3) The said High Court shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the High Court of Justice, and continued therein down to the time at which this Act goes into effect; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, shall be continued and concluded, in and before the said High Court, as shall be directed by Rules or Orders of Court. (See Imp. Act of 1873, s. 22; Order 60, *post*.)

12. The jurisdiction of the High Court of Justice and the Court of Appeal, respectively, shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective existing Courts if this Act had not been passed. (See Imp. Act of 1873, s. 23.)

Rules as to exercise of jurisdiction.

## JURISDICTION OF COURT OF APPEAL.

**Jurisdiction of Court of Appeal.** **13.** The Court of Appeal shall be a Superior Court of Record, and shall continue to have all the jurisdiction and power which the said Court has heretofore had, save as varied by or under this Act; and in civil cases shall also have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of the High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which appeals shall be allowed, as may be made pursuant to this Act. (*See Imp. Act of 1873, ss. 18, 19; R. S. O., c. 38, s. 18, et seq.*)

**On an appeal from the High Court, Court of Appeal to have all powers of High Court.** **14.** For all the purposes of and incidental to the hearing and determination of any such appeal, and the amendment, execution, and enforcement of any judgment or order made on such appeal, and for the purpose of every other authority given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice. (*See Imp. Act of 1873, s. 19, second part; R. S. O., c. 38, s. 22.*)

**Jurisdiction subject to rules etc.** **15.** The jurisdiction and power of the Court of Appeal, in respect of the said matters and all others, shall be and are subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act. (*See Imp. Act of 1873, s. 19, first part.*)

## RULES OF LAW.

**Law and equity to be concurrently administered.** **16.** In every civil cause or matter commenced in the High Court of Justice, law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the Rules following (*Imp. Act of 1873, s. 24; See R. S. O., c. 49, ss. 4, 5*):

(2) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act. (*Imp. Act of 1873, s. 24, sub-s. 1.*)

(3) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or

against any right, title or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act. (*Ib.* sub-s. 2.)

(4) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant. (*Ib.* sub-s. 3.)

(5) The said Courts respectively, and every Judge thereof shall recognize and take notice of all equitable estates titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act. (*Ib.* sub-s. 4);

(6) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto :

Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as shall be just. (*Ib.* sub-s. 5.)

(7) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations, and liabilities existing by the Common Law or created by any Statute, in the same manner as the same would have been recognized and given effect to if this act had not passed by any of the Courts whose jurisdiction is vested in the High Court of Justice. (*See Ib.* sub-s. 6.)

(8) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided (*Ib.* sub-s. 7.)

Rules of law upon certain points.

17. Whereas it is expedient to amend and declare the Law to be hereafter administered in Ontario as to the matters next hereinafter mentioned: Be it enacted as follows: (*See Imp. Act of 1873, s. 25; R. S. O. c. 40, ss. 86, 87; c. 49, ss. 4, 5, 21, 23; c. 50, ss. 131-133.*)

Statutes of Limitation not to apply to express trusts.

(2) No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations. (*Ib.* sub-s. 2; *See R. S. O. c. 108, s. 30.*)

- 5 (3) An estate for life without impeachment of waste shall Equitable  
not confer or be deemed to have conferred upon the waste.  
tenant for life any legal right to commit waste of the  
description known as equitable waste, unless an inten-  
tion to confer such right shall expressly appear by the  
instrument creating such estate. (Imp. Act of 1873,  
s. 25, sub-s. 3.)
- 10 (4) There shall not, after the commencement of this Act, be Merger.  
any merger by operation of law only of any estate, the  
beneficial interest in which would not be deemed to be  
merged or extinguished in equity. (*Ib.* sub-s. 4.)
- 15 (5) A mortgagor entitled for the time being to the posses- Suits for  
sion or receipt of the rents and profits of any land as to possession of  
which no notice of his intention to take possession or land by  
to enter into the receipt of the rents and profits thereof mortgagors.  
shall have been given by the mortgagee, may sue for  
such possession, or sue or distrain for the recovery of  
such rents or profits, or to prevent or recover damages  
20 in respect of any trespass or other wrong relative  
thereto, in his own name only, unless the cause of  
action arises upon a lease or other contract made by  
him jointly with any other person, and in that case  
he may sue or distrain jointly with such other person.  
(*See Ib.* sub-s. 5.)
- 25 (6) In case of an assignment of a debt or other chose in Assignment of  
action, if the debtor, trustee, or other person liable in debts and  
respect of such debt or chose in action shall have had choses in  
notice that such assignment is disputed by the assignor action.  
or any one claiming under him, or of any other oppos-  
ing or conflicting claims to such debt or chose in  
30 action, he shall be entitled, if he think fit, to call upon  
the several persons making claim thereto to interplead  
concerning the same or he may, if he think fit, pay  
the same into the High Court of Justice under and in  
conformity with the provisions of law for the relief of  
35 trustees. (*See Ib.* sub-s. 6 ; R. S. O., c. 116, s. 6 *et seq.*)
- 40 (7) Stipulations in contracts, as to time or otherwise, which Stipulations  
would not before the passing of this Act have been not of the  
deemed to be or to have become of the essence of such essence of  
contracts in a Court of Equity, shall receive in all contracts.  
Courts the same construction and effect as they  
would have heretofore received in equity. (Imp. Act  
of 1873, s. 25, sub-s. 7.)
- 45 (8) A mandamus or an injunction may be granted or a Injunctions  
receiver appointed by an interlocutory order of the and receivers.  
Court, in all cases in which it shall appear to the Court  
to be just or convenient that such order should be  
made ; and any such order may be made either uncon-  
ditionally, or upon such terms and conditions as the  
Court shall think just ; and if an injunction is asked,  
50 either before, or at, or after the hearing of any cause  
or matter, to prevent any threatened or apprehended  
waste or trespass, such injunction may be granted, if  
the Court shall think fit, whether the person against

whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable. (*Ib.* sub-s. 8; *See* R. S. O., c. 40, s. 39; c. 52.) 5

Infants. (9) In questions relating to the custody and education of infants, the Rules of Equity shall prevail. (Imp. Act of 1873, s. 25, sub-s. 10.) 10

Cases of conflict not mentioned. (10) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail. (*Ib.* sub-s. 11.) 15

### PART III.

#### SITTINGS AND DISTRIBUTION OF BUSINESS.

##### HIGH COURT.

Abolition of terms. 18. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall not be terms applicable to any sitting or business of the High Court of Justice, or of any commissioners to whom any jurisdiction may be assigned under this Act, or of any 20 commissioners of assize; but in all cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless 25 and until provision is otherwise made by any lawful authority. (*See* Imp. Act of 1873, s. 26, first part; R. S. O., c. 41, s. 12; G. O. Chy., No. 413; ss. 24 and 80 *post*; Order 57, *post*.)

Sittings of Courts. 19. Subject to Rules of Court, the High Court of Justice and the Court of Appeal, and the Judges thereof respectively, or 30 any such commissioners as aforesaid shall have power to sit and act, at any time and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or commissioners, or for the discharge of any duty which by any Statute, or otherwise, is required to be discharged 35 during or after term. (*See* Imp. Act of 1873, s. 26, second part; R. S. O. c. 41, s. 12; Order 57, *post*.)

Vacations. 20. The Lieutenant-Governor in Council may from time to time, upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, make, re- 40 voke or modify, orders regulating the vacations to be observed by the High Court of Justice and the Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in 45 this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. (*See* Imp. Act of 1873, s. 27, first part; Order 57, *post*.)

21. Provision shall be made by Rules of Court for the hearing, in Toronto, during vacation, by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.  
5 (See Imp. Act of 1873, s. 28; Order 57, *post.*)

Sittings in vacation.

22. Commissions of assize or any other commissions, either general or special, may be issued, by the proper authority, assigning to the persons to be therein named, the duty of trying and determining within any place or district specially  
10 fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter, depending in the said High Court; or the exercise of any civil  
15 High Court; and any commission so issued shall be of the same validity as if it were enacted in the body of this Act; and any commissioner or commissioners shall, when engaged in the exercise of any jurisdiction so assigned to him or them, be deemed to constitute a Court of the said High Court of  
20 Justice. (See Imp. Act of 1873, s. 29.)

Commissions of Assize and other Commissions.

23. All causes and matters in the High Court of Justice, shall be distributed among the several Divisions and Judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or orders  
25 of transfer, to be made under the authority of this Act. Every document by which any cause or matter shall be commenced in the said High Court shall be marked with the name of the Division to which the same is assigned. (See Imp. Act of 1873, ss. 33 and 42.)

Rules of Court to provide for distribution of business.

30 24. Subject to any Rules of Court and to the provisions of this Act and to the power of transfer, all causes and matters pending in the Court of Queen's Bench at the commencement of this Act are hereby assigned to the Queen's Bench Division of the High Court; all causes and matters pending in the Court  
35 of Chancery at the commencement of this Act are hereby assigned to the Chancery Division; and all causes and matters pending in the Court of Common Pleas at the commencement of this Act are assigned to the Common Pleas Division of the High Court. (See Imp. Act of 1873, s. 34.)

Assignment of pending business to the Divisions of the High Court.

40 25. Subject as aforesaid, every cause or matter afterwards commenced in the said High Court of Justice shall be assigned to one of the Divisions of the said High Court, by marking the document by which the same is commenced with the name of such Division.

Documents by which cause commenced to be marked with name of Division to which assigned.

45 (2) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the Division of the  
50 said High Court to which such cause or matter is for the time being attached. (See Imp. Act of 1875, s. 11, sub-s. 1.)

26. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of

Power of Transfer.

the parties thereto, be transferred from one Division or Judge of the High Court of Justice to any other Division or Judge thereof, by such authority and in such manner as Rules of Court may direct, or as transfers might be made from one Court to another before the passing of this Act. (*See Imp. Act of 1873, s. 36; R. S. O., c. 49, ss. 21—29; 41 Vic., c. 8, s. 4, Ont.*) 5

Rota of Judges for election petitions.

27. The Judges to be placed on the rota for the trial of election petitions for Ontario in each year, under the provisions of "The Controverted Elections Act of Ontario," shall be selected out of the Judges of the Supreme Court in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected, as hitherto, that is to say: the members of the Court of Appeal, and of the Queen's Bench, Chancery and Common Pleas Divisions aforesaid shall, on or before the third day of Michaelmas Term in every year, select, by a majority of votes of the members of such Court or Division, one of the Judges thereof: Provided that the Judges who at the commencement of this Act, shall be upon the rota for the trial of such petitions during the then current year, shall continue upon such rota until the end of such year, in the same manner as if this Act had not passed. (*See Imp. Act of 1873, s. 38; R. S. O., c. 11, s. 33.*) 10 15 20

Business to be disposed of by one Judge as far as practicable.

28. Every action and proceeding in the High Court of Justice, and all business arising out of the same, except as herein-after provided, shall, so far as is practicable and convenient, be heard, determined, and disposed of, before a single Judge. (*See Imp. Act of 1876, s. 17, first part; R. S. O., c. 39, ss. 20-26; c. 50, ss. 281, 282.*) 25

(2) A Judge sitting elsewhere than in a Divisional Court, is to decide all questions coming properly before him, and is not to reserve any case, or any point in a case, for the consideration of a Divisional Court. (*See Imp. Act of 1873, s. 46; Imp. Act of 1875, s. 22; Imp. Act of 1876, s. 17; R. Sup. C., Order 57; R. Sup. C., Dec. 1876, R. 8.*) 35

(3) In all such cases any Judge sitting in Court shall be deemed to constitute a Court. (*See Imp. Act of 1873, s. 39, last part; R. S. O., c. 39, s. 21.*)

Divisional Courts of the High Court.

29. All business which may from time to time be so ordered by Rules of Court shall be transacted and disposed of by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. 40

(2) Any number of such Divisional Courts may sit at the same time. 45

(3) A Divisional Court of the said High Court of Justice shall be constituted by two or three, and no more, of the Judges thereof; and, except when through pressure of business or any other cause it may not conveniently be found practicable, shall be composed of three such Judges.

(4) Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts.

(5) But where the Divisional Court is constituted of two Judges only, such Court shall not hear or adjudicate upon any application against the judgment of either of such Judges.

5 (6) The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act or otherwise. (*See Imp. Act of 1873, s. 40; Imp. Act of 1876, s. 17.*)

10 **30.** Divisional Courts shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned. (*See Imp. Act of 1873, s. 41.*)

Constitution of Divisional Courts.

15 **31.** Subject to any Rules of Court, it shall be the duty of every Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such

20 Divisional Courts as may from time to time be deemed necessary for the transaction of the business of any of the Divisions of the High Court ;

Judges to take part in business of any Division.

(a) All such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorized by this Act, and also for the proper transaction of that part of the business of the said Divisions respectively which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court ;

(b) And in case of difference among them, in such manner as a majority of the said Judges shall determine. (*See Imp. Act of 1873, s. 41.*)

#### APPEALS.

**32.** No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only which by law are left to the discretion of the Court, shall be

40 subject to any appeal, except by leave of the Court, or Judge, making such order. (*See Imp. Act of 1873, s. 49; R. S. O., c. 38, s. 18. sub-s. 3.*)

Orders not subject to appeal.

**33.** No appeal shall lie from the judgment or order of any Divisional Court or Judge of the High Court to the Court of Appeal

45 without the special leave of the Judge or Divisional Court whose judgment or order is in question, or of the Court of Appeal ; unless the title to real estate or some interest therein or the validity of a patent is affected; or unless the matter in controversy on the appeal exceeds the sum or value of \$200, exclusive

50 of costs; or unless the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights. (*See R. S. O., c. 38, s. 49; C. S. U. C., c. 38, s. 49; Imp. Act of 1873, s. 45.*)

Limitation of appeal where amount does not exceed \$200.

Limitation of appeal where amount does not exceed \$500.

**34.** In case there has been no difference of opinion among the Judges of the Divisional Court as to any order of such court, or where on a motion to set aside or discharge a rule, order, or decision of a Judge, the order of the Divisional Court did not substantially vary the rule, order, or decision moved against, no appeal shall lie from the order of the Divisional Court of the High Court to the Court of Appeal without such leave as aforesaid, unless the title to real estate or some interest therein or the validity of a patent is affected; or unless the matter in controversy on the appeal exceeds the sum or value of \$500, exclusive of costs; or unless the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights. (*Ib.*)

Appeals from interlocutory orders.

**35.** There shall be no appeal to a Divisional Court from any interlocutory order, whether made in Court or Chambers, in case before the passing of this Act there would have been no relief from a like order by an application to a Superior Court; and there shall be no appeal to the Court of Appeal from any interlocutory order in case before the passing of this Act there would have been, no relief from a like order by an appeal to the Court of Appeal. Any doubt which may arise as to what decrees, orders, or judgments, are interlocutory, shall be determined by the Court of Appeal. (*See Imp. Act of 1875, s. 12.*)

Discharging orders made by a single Judge.

**36.** Save as aforesaid, every rule, order, or decision made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as by law belongs to him, may be set aside or discharged upon notice by any Divisional Court; and no appeal shall lie to the Court of Appeal from any such rule, order or decision, unless by special leave of the Judge by whom the same was made or of the Divisional Court aforesaid or of the Court of Appeal. (*See Imp. Act of 1873, s. 50; R. S. O., c. 38, s. 16; c. 39, s. 22; c. 50, s. 281, sub-s. 2; s. 15 ante; Order 54 post.*)

Appeal from decision of a Judge in Court.

**37.** Save as aforesaid and subject to the other provisions of this Act, any rule, order or decision of a Judge in Court may be appealed against to the Court of Appeal. (*See Imp. Act of 1873, ss. 18, 19, 50; ante, s. 13; s. 34, post; Order 54, post.*)

No appeal unless proper notice and security given.

**38.** No appeal to the Court of Appeal shall be allowed unless notice thereof is given in writing to the opposite party and to the Clerk of the Crown and Pleas, or Registrar of the proper Court, within one month after the judgment complained of, or within such further time as the Court appealed from, or a Judge thereof, may allow; nor unless within three months after the judgment complained of or within such further time as the Court or Judge aforesaid may allow, the appellant gives proper security to the extent of \$400 to the satisfaction of the Court appealed from, that he will effectually prosecute his appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is in whole or in part affirmed. (*See R. S. O., c. 38, s. 26.*)

Appeals from High Court.

**39.** Save as aforesaid, appeals from the judgments of the High Court or a Judge thereof in civil cases, shall be within

the same time and in the same manner and with the same effect as heretofore from like judgments of the Superior Courts or of a Judge thereof. (*See R. S. O., c. 38, ss. 45-48.*)

40 5 **40.** Upon the request of the Judge or Judges with or for whom he is requested to sit or act, it shall be lawful for any Judge of the Court of Appeal, who may consent so to do, to sit and act as a Judge of the said High Court, or to perform any other official or ministerial acts for or on behalf of any Judge absent from illness or any other cause, or in the place of any Judge whose office has become vacant, or as an additional Judge of any Division; and while so sitting and acting any such Judge of the Court of Appeal shall have all the power and authority of a Judge of the said High Court. (*See Imp. Act of 1873, s. 51; R. S. O., c. 38, s. 9.*)

Provision for absence or vacancy in office of a Judge.

15 41. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof. (*See Imp. Act of 1873, s. 52.*)

Power of a single Judge in Court of Appeal.

25 42. In case from pressure of business, or other cause, it shall at any time seem expedient to the Lieutenant-Governor in Council, or to the Judges of the Supreme Court, or a majority of them (of which majority two Judges of the Court of Appeal, including the Chief Justice unless absent on leave, shall form part), the Court of Appeal may sit in two Divisions at the same time; and in such case, and to enable two Divisional Courts to be held, the Judges of the said Supreme Court, or the said majority of them, shall select from the Judges of the High Court so many of the Judges thereof as may be necessary, together with the ordinary Judges of the Court of Appeal, to form two Divisions of the said Court, and the Judges so chosen and acting shall have all the power and authority of the Judges of the said Court of Appeal.

Divisional Courts of Court of Appeal.

40 (2) Unless otherwise arranged by the Judges of the Court of Appeal and the said Judges so selected, two of the ordinary Judges of the Court of Appeal shall where practicable sit in each such Divisional Court. (*See Imp. Act. of 1875, s. 12.*)

45 43. No appeal shall lie to the Supreme Court of Canada without the special leave of such Court, or of the Court of Appeal, unless the title to real estate or some interest therein or the validity of a patent is affected; or unless the matter in controversy on the appeal exceeds the sum or value of \$1,000, exclusive of costs; or unless the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights. (*Ib.; See R. S. O., c. 38, s. 49; 38 Vic., c. 11, ss. 17, 49 [D]; 42 Vic., c. 39, s. 8, [D].*)

Limitation of appeal to Supreme Court.

## PART IV.

## TRIAL AND PROCEDURE.

- Judgment not to be given for party unless entitled on the facts proved.** 44. At the trial of any action no party shall be entitled to judgment on the ground of his pleading being true, if the facts proved are not sufficient in point of law to entitle him to judgment. (*See* R. S. O., c. 49, s. 5; R. Sup. C., Dec. 1876, R. 3; Imp. Act of 1876, s. 17.) 5
- Modes of trial.** 45. Subject to Rules of Court, in causes and matters which, at the time of the passing of this Act, are within the jurisdiction of the Courts of Law, the mode of trial shall be as is now provided by law for like cases in actions in the said Courts of Queen's Bench and Common Pleas; and, subject 10 as aforesaid, in causes and matters over which the Court of Chancery has, at the time of the passing of this Act, exclusive jurisdiction, the mode of trial shall be according to the present practice of the Court of Chancery. (*See* R. S. O., c. 49, ss. 4, 31; c. 50, ss. 252-258.) 15
- Sittings for trial of non-jury cases.** 46. As often in every year as the due despatch of business and the public convenience may require, there shall be sittings at every county town, for the trial of causes and issues, whether legal or equitable, which are to be heard and determined by a Judge without a jury, and in case such sittings 20 are appointed at any county town for the same time and before the same Judge as jury cases, separate lists shall be made of the jury and non-jury cases, and the jury cases shall first be disposed of, unless where the Judge shall see fit, for some special reason, to direct otherwise. This section is sub- 25 ject to section 255 of the Common Law Procedure Act. (*See* R. S. O., c. 40, ss. 23-27; c. 41, ss. 1-12; c. 49, s. 3; c. 50, s. 249.)
- References and assessors.** 47. (Subject to any Rules of Court and to such right as may exist to have particular cases submitted to the verdict of a jury) any question arising in any cause or matter (other than 30 a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred, by the Court or by any Divisional Court or Judge before whom such cause or matter may be pending, for inquiry and report to a Judge of a County Court, or to an official referee, or to 35 any other person agreed on by the parties; and the report of such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. (*See* Imp. Act of 1873, s. 56; R. S. O., c. 50, ss. 189, 195, 197; Longman v. East, 3 C. P. D. 142.) 40
- (2) The High Court, or any Divisional Court or Judge as aforesaid, or the Court of Appeal, may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear 45 such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such referees or assessors shall be determined by the Court. (*See* Imp. Act of 1873, s. 56, second part; G. O. Chy., No. 541.) 50

48. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court, (1) in which all parties interested who are under no disability consent thereto, and also (2) without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a Judge conveniently be made before a jury, or conducted by the Court or Judge directly,—the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact, or any question of account arising in the cause or matter, to be tried either before a Judge of a County Court, or before an official referee, or (if the parties so agree) before a special referee. (*See Imp. Act of 1873, s. 57, first part.*)
- 15 (2) All such trials before referees shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct. (*Imp. Act of 1873, s. 57, second part.*)
- 20 49. In all cases of a reference to or trial by referees under this Act, the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of the reference or trial as shall be prescribed by Rules of Court, or (subject to such Rules) by the Court or Judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury. (*Imp. Act of 1873, s. 58.*)
- 25 50. With respect to all such proceedings before referees and to their reports, the Court or Judge shall have, in addition to any other powers, the same or the like powers as by the Common Law Procedure Act and other Acts are given to any Court whose jurisdiction is hereby vested in the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards and appeals therefrom respectively. (*See Imp. Act of 1873, s. 59; R. S. O., c. 50, ss. 189-227.*)
- 30 51. In the office of every Deputy Registrar and Deputy Clerk of the Crown such seal shall be used as the Lieutenant-Governor shall from time to time direct, which seal shall be impressed on every writ and other document issued out of or filed in such office; and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such Deputy Registrar or Deputy Clerk of the Crown, shall in all parts of this Province be received in evidence without further proof thereof. (*See Imp. Act of 1873, s. 61; R. S. O., c. 40, s. 3; c. 47, s. 6.*)
- 35 52. Save as by this Act or by any Rules of Court may be otherwise provided, all forms and methods (as nearly as may be) of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by this Act vested in the said High Court under or by virtue of any law, general order, or rule whatsoever, and which are not inconsistent with this Act or with any Rules of Court—may continue to be used and practised, in the said High Court of Justice, in such and the like cases, and for such and the like purposes, as those to which

Power to direct trials before referees.

Power of referees and effect of their findings.

Powers of Court with respect to proceedings before referees.

Seals of Deputy Registrars and Deputy Clerks of the Crown.

Provision for saving of existing procedure where not inconsistent with this Act or Rules of Court.

they would have been applicable in the respective Courts of which the jurisdiction is so vested, if this Act had not passed. (See Imp. Act of 1873, s. 73; Imp. Act of 1875, s. 21.)

#### RULES OF COURT.

**Rules of Court.** 53. The Rules of Court in the Schedule to this Act shall come into operation at the commencement of this Act, 5 and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice. But such Rules of Court and also all such other Rules of Court (if any) as may be made after the passing and before the commencement of this Act, under the authority of the next 10 section, may be annulled or altered by the authority by which new Rules of Court may be made after the commencement of this Act. (See Imp. Act of 1875, s. 16.)

**Who may  
make Rules.**

54. At any time after the passing and before the commencement of this Act, the Chief Justice of Ontario, the Justices 15 of Appeal, the Chief Justice of the Queen's Bench, the Chancellor, and the Chief Justice of the Common Pleas, or any five of them, and the other Judges of the several Courts intended to be united and consolidated by this Act, or a majority of such other Judges, may make any further or additional Rules 20 of Court for carrying this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the Rules in the Schedule to this Act; that is to say:—

- (a) For regulating the sittings of the High Court of 25 Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers;
- (b) For regulating the pleading, practice, and pro- 30 cedure in the High Court of Justice and Court of Appeal;
- (c) For the hearing of appeals from County Courts, or a Judge of a County Court, from Surrogate Courts, Stipendiary Magistrates, or Division 35 Courts, by any two or more of the Judges of the Supreme Court, instead of the same being heard by the Court of Appeal, or a Judge thereof, (as the case may be); and for regulating the selection of the Judges of the Supreme Court, who 40 shall hear such appeals, and for regulating all matters relating to the practice on such appeals. (R. S. O., c. 38, s. 19; 41 Vic., c. 8, s. 3; 42 Vic., c. 19, ss. 16, 17; 43 Vic. c. 8, s. 21); and,
- (d) Generally, for regulating any matters relating to 45 the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the said Supreme Court, or to the costs of proceedings therein; and every other matter deemed expedient for the better attaining the 50 ends of justice, advancing the remedies of suitors, and carrying into effect the provisions of this Act and of all other Acts now or hereafter in force respecting the said Courts (See Imp. Act of 1875, s. 17; R. S. O., c. 49, s. 45, sub-s. 7); 55

- (2) The said Judges shall have power, subject to the approval of the Lieutenant-Governor in Council, to make rules from time to time regulating all fees payable in stamps.
- 5 (3) From and after the commencement of this Act, the said Supreme Court may at any time, with the concurrence of a majority of the Judges thereof present at any meeting for that purpose held, alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of Court as is by this section vested in the existing Judges before the commencement of this Act;
- 10 (4) All Rules of Court made in pursuance of this section, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section (*See Imp. Act of 1875, s. 17*);
- 15 (5) Subject to any Rules of Court which may be made under the preceding provisions of this section the Judges of the Court of Appeal shall continue after the commencement of this Act to have all the powers which they now possess as to making Rules of Court for the regulation of the practice in appeals; and the Judges of the High Court shall as regards matters in the said High Court have in like manner all the powers which the Judges of the Court of Chancery and of the Superior Courts of Law have respectively for the regulation of the practice of the said Courts (*See R. S. O., c. 38, s. 56; c. 49, s. 45*);
- 20 (6) Where any provisions in respect of the practice or procedure of any Courts, the jurisdiction of which is vested by this Act in the High Court of Justice, are contained in any Statute, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice, unless, in the case of any Act hereafter passed, this power shall be expressly excluded with respect to such Act or any provision thereof, (*See Imp. Act of 1875, s. 24.*)
- 25 (7) Any provisions relating to the payment, transfer, or deposit into, or in, or out of any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure. (*See Imp. Act of 1875, s. 24.*)
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55. The Lieutenant-Governor in Council may from time to time authorize the following persons, viz.: the Chief Justice of Ontario, the Chief Justice of the Queen's Bench, the Chancellor, and the Chief Justice of the Common Pleas, to make Rules of Court under this Act; every such appointment to continue for such time as shall be specified by Order in Council, and the Judges so appointed, or any three of them, may make such Rules, and the same shall have the same effect as if made by all the Judges of the Supreme Court, under the preceding section. (*See Imp. Act of 1876, s. 17, latter part.*)

Governor in Council may authorize certain Judges to make Rules.

Council of Judges to consider procedure and administration of Justice.

56. A Council of the Judges of the said Supreme Court of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lieutenant-Governor, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or any other Court or by any other authority; and they shall report annually to the Lieutenant-Governor what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provision (if any) which cannot be carried into effect without legislative authority it would be expedient to make for the better administration of justice. An Extraordinary Council of the said Judges may also at any time be convened by the Lieutenant-Governor. (*See Imp. Act of 1873, s. 75.*)

Statutes relating to existing Courts to be read as applying to Courts under this Act.

57. All statutes relating to the several Courts consolidated by this Act, and the Judges thereof, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice, and the Judges thereof, as the case may be, had been named therein instead of such Courts, so consolidated as aforesaid, or the Judges thereof; and in all cases not hereby expressly provided for in which, under any such Statute, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts so consolidated is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of Judges of the said High Court of Justice; and any general or other commission, by virtue whereof any Judges of any of the Courts so consolidated may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters civil or criminal, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered. (*See Imp. Act of 1873, s. 76.*)

## PART V.

### OFFICERS AND OFFICES,

Officers of existing Courts to be attached to their respective divisions of the Supreme Court.

58. Subject to orders of the Lieutenant-Governor in Council, all officers, save as hereinafter mentioned, who at the time of the commencement of this Act shall be attached to the Court of Chancery shall be attached to the Chancery Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court. (*Comp. R. Sup. C., Order 60, R. 1.*)

- (2) Subject as aforesaid, the above provision shall not apply to the Master in Ordinary or local masters of the Court of Chancery, or to the taxing officers, and all these officers shall be officers of the Supreme Court and attached thereto.
- 5 (3) All officers shall hold their offices by the same tenure, and upon the same conditions as to security and otherwise, as if this Act had not passed. (See Imp. Act of 1879, s. 23.)
- 10 (4) Where a doubt exists as to the position under this Act of any existing officer attached to any Court or Judge affected by this Act, such doubt may be determined by Rule of Court. The Lieutenant-Governor in Council shall have the power, and (subject to any Order in Council) the Judges of the said Supreme Court shall have power, to change the official names of offices and officers, and to change and regulate the duties of the officers. (See Imp. Act of 1879, s. 24.)
- 15 (5) Any officer who is removable by the Court to which he is now attached shall be removable by the Court to which he shall be attached under this Act, or by the majority of the Judges thereof. (See Imp. Act of 1873, s. 77; R. S. O., c. 40, s. 11.)
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59. Subject to any Order in Council in that behalf, the business to be performed in the High Court of Justice and in the Court of Appeal respectively, or in any Divisional or other Court thereof, or in the chambers of any Judge thereof, other than that performed by the Judges, shall be distributed among the several officers attached to the said Courts by section 58 in such manner as may be directed by Rules of Court; and such officers shall perform such duties in relation to such business as may be directed by Rules of Court; and, subject to such Order in Council and Rules of Court, all such officers respectively shall continue to perform the same duties, as nearly as may be, and in the same manner as if this Act had not passed. (See Imp. Act of 1873, s. 77, fourth paragraph.)

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Distribution of business among officers.

60. All bonds, and securities heretofore given by Government officers and their sureties or by other persons, shall be held to be and continue binding, notwithstanding the changes effected by this Act, except in the case of any surety who, at least one calendar month before this Act goes into effect, gives notice in writing to the Provincial Secretary of his wish to be relieved of his liability. (See 32 Vic., c. 29, s. 17; 40 Vic. c. 6, s. 9 (D).)

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Existing securities continued.

61. Every officer of the Court hereafter appointed before he enters upon his duties shall take and subscribe the following oath: "I, A. B. of—, do hereby solemnly swear that I will, according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfil the duties of the office of (as the case may be) without favour or affection, prejudice or partiality, to any person or persons whomsoever: So help me God." (See R. S. O. c. 40, s. 12).

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Oath of officers.

(2) When not convenient to a person appointed to any office to attend at Toronto to take the oath of office, the oath may be taken before the Judge of the County Court of the County in which such officer resides, or before any Commissioner authorized to administer

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affidavits in such County, and the oath shall be certified by such Judge or Commissioner and filed amongst the records of the Court at Toronto. In all other cases the oath shall be administered to the officer by the Judges or one or more of them in open court. 5  
(See R. S. O., c. 40, ss. 13, 14.)

Authority of  
certain officers  
preserved.

**62.** Subject to any Rules of Court, the Master in Chancery, the Clerks of the Crown and Pleas, the Referee in Chambers, the Accountant, the Inspector of Titles, the Referee of Titles, the Local Masters of the Court of Chancery, 10 and any other officers of the Superior Courts of Law and Equity, shall respectively have (under the said names or any names which by or under this Act are or shall be given to them or any of them) the same judicial and other powers in respect of business in each and every of the Divisions of the said High 15 Court as they have now in respect of the business of the Court to which they are attached; and the orders and decisions of the said officers shall be subject to appeal as heretofore. (See R. S. O., c. 39, ss. 29-32; c. 40, ss. 8, 9, 10, 28, 29; c. 50, s. 189 *et seq.*; c. 110, s. 23; Reg.-Gen. of Feb'y, 1870, 29 Q. B. U. C., 623; G. 20 O. Chy., Nos. 14, 15, 34-38, 197, 211-254, 495, 531-534, 560-589, 625, 626, 633, 634, 636, 638 *et seq.*)

Official  
referees.

**63.** Subject as aforesaid, the Judges of the County Courts and the officers specially named in the last preceding section, shall be official referees for the trial of such questions as shall 25 be directed to be tried by such referees. (See Imp. Act of 1873, ss. 57, 83; R. Sup. C., June 1876, R. 14-16; R. S. O., c. 50, s. 189.)

- (2) In case the business is found to require other or additional official referees, and the Presidents of the 30 said Divisions so certify, the Lieutenant-Governor from time to time may appoint other and additional official referees accordingly. (See Imp. Act of 1873, s. 83.)
- (3) In the case of officers who are paid by salary, the fees 35 on any reference or trial shall be paid in stamps; other referees shall be paid by fees.

Local Masters,  
Deputy  
Registrars,  
and Deputy  
Clerks of the  
Crown.

**64.** There shall be a Local Master in every County or Union of Counties other than the County of York, and every Local Master hereafter appointed shall reside in the county to which 40 he is appointed.

- (2) Where there is no Local Master at the commencement of this Act, or when a vacancy occurs in the office of Local Master, the Judge of the County Court for the County shall be the Local Master until and 45 unless another person is appointed Local Master. In such case if there are two County Judges—a Senior and Junior Judge—both Judges shall be Local Masters until and unless one of them or some other person is appointed sole Local Master. 50
- (3) Where a County Court Judge is the Local Master, the County Court Clerk shall be the Deputy Registrar.
- (4) The offices of Deputy Clerk of the Crown and Deputy Registrar (not Local Master) shall be consolidated as vacancies occur in either; unless where the Presidents 55 of the Divisions of the High Court or a majority recommend otherwise.

- 5 (5) Where a reference is made to a Deputy Clerk of the Crown, or an examination is taken by him, he shall be entitled to take and receive to his own use the fees on such reference or examination. (*See R. S. O., c. 50, s. 189 et seq.; ante s. 43 et seq.*)
- 10 (6) The Lieutenant-Governor in Council may commute the fees of a Local Master, or of a Local Master and Deputy Registrar, including his fees as an official referee, for a fixed annual sum, such sum not to exceed the average income derived from fees for the preceding five years.
- 15 (7). The Lieutenant-Governor in Council may commute the fees payable to a Deputy Clerk of the Crown on references and examinations for a fixed annual sum, such sum not to exceed the average income derived from such fees during the preceding five years.
- 20 (8) Any annual sum so fixed as provided in the preceding two sub-sections shall continue until varied by Order in Council, but any order for payment of any such annual sum as aforesaid may be rescinded, and the amount of such sum may by Order in Council be increased or diminished, provided that in no case shall any Order in Council name a sum exceeding the average income or fees aforesaid (as the case may be) during the preceding five years.
- 25 (9) The local masters, deputy registrars, and local clerks, shall hereafter, like other officers, be appointed by the Lieutenant-Governor, and shall hold office during the pleasure of the Lieutenant-Governor.
- 30 (10) Where a Local Master, or Deputy Registrar, or Deputy Clerk of the Crown, or other officer, is paid by a salary, he shall not, save as hereinbefore expressly provided, take for his own benefit, directly or indirectly, any fee or emolument, save the salary to which he may be entitled; but the like sums and fees heretofore payable on proceedings in his office shall continue to be payable; and all such fees shall form part of the Consolidated Revenue Fund of this Province, and shall be payable in stamps, subject to the provisions of the Act respecting Law Stamps. (*See R. S. O., c. 40, s. 16.*)
- 35 (11) No Local Master whose gross income from his office of Local Master or of Deputy Registrar and Local Master, is \$2,000 or upwards shall, during the continuance of his appointment, directly or indirectly, practise in the profession of the law as Counsel, Attorney, or Solicitor, or as a Notary Public, or Conveyancer, or do any manner of conveyancing, or prepare any papers or documents to be used in any Court of this Province, under the penalty of forfeiture of office, and the further penalty of \$400, to be recovered by any person who sues for the same by action in the High Court, and one-half of such pecuniary penalty shall belong to the party suing, and the other half to Her Majesty for the use of the Province; but nothing in
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this section shall prevent the Lieutenant-Governor in Council, or the High Court, from requiring a Local Master whose income does not amount to \$2,000, to abstain from practising under the like penalties. (See R. S. O., c. 42, s. 5.)

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- (12) The High Court may, with the concurrence of the Lieutenant-Governor, relieve any person now holding the office of Local Master and Deputy Registrar, or any other officer from the operation of the preceding two sub-sections or either of them. 10
- (13) Every stamp affixed to any matter or proceeding under the authority of the Revised Statute respecting Law Stamps, shall be cancelled in such manner as the Lieutenant-Governor in Council may direct; and in case the Lieutenant-Governor thinks fit to dispense 15 therewith, it shall not be necessary for the officer who cancels the stamps to mark thereon, in ink, the date of the issue or receipt of the matter, or proceeding to which the stamp is affixed. (See R. S. O., c. 21, s. 15.)
- (14) Every officer paid by fees shall yearly, and on or 20 before the 15th day of January in every year, transmit to the Treasurer of the Province a just, true and faithful account, to be verified upon oath, of the amount of fees paid or payable to him in respect of his office during the preceding year. (See R. S. O., c. 16. 25 s. 37; 43 Vic., c. 3.)
- (15) The Lieutenant-Governor or the member of the Govern- ment having charge of the matter may require the return to state any particulars, or to be made in any form, that may be thought proper, and such return 30 shall be made accordingly.

Surrogate and County Court Clerks not to draw or advise on certain documents.

**65.** No Clerk or Registrar of the Surrogate Court shall for fee or reward draw or advise upon any will or other testamentary paper, or any paper or document connected with the duties of his office for which such fee is not expressly allowed to him by the 35 tariff in that behalf; and no Clerk of a County Court shall for fee or reward draw or advise upon any chattel mortgage, or any other paper or document connected with the duties of his office and for which a fee is not expressly allowed by the tariff in that behalf. 40

Official Guardian *ad litem*.

**66.** \* There shall be an official Guardian *ad litem* of infants; and the solicitor heretofore usually appointed by the Court of Chancery as guardian *ad litem* of infants shall be the first Official Guardian, and shall hold office during pleasure as if appointed by the Lieutenant-Governor. 45

- (a) In case of a vacancy the appointment shall be by the Lieutenant-Governor, as in the case of the other officers of the Courts; and the person appointed shall be a Barrister-at-Law and Solicitor of this Province, of not less than seven years standing, and shall hold 50 office during pleasure.

(b) The official Guardian, besides acting as guardian *ad litem* of infants under Rules of Court and other orders, shall perform such other duties as a Divisional Court or Judge may from time to time direct.

- 5 (2) The same costs as hitherto shall be paid to the guardian by any party; and the same costs as hitherto shall be payable to the guardian out of funds in Court; but all costs so paid to the Guardian by any party in respect of any business done after the commencement of this Act shall be by such Guardian paid forthwith into Court with the privity of the Accountant of the High Court, and shall be placed to the credit of an account to be intituled "Account of Official Guardian *ad litem*;" and all costs payable to the Guardian out of any funds in Court, in respect of any business done after the commencement of this Act shall be transferred to the credit of the same account.
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- 20 (3) Where the estate is small, and, in view of the amount at the credit of the said account, the amount or part of the amount payable out of the estate for the Guardian's costs does not appear to be required to pay the salary and disbursements of the official Guardian, the Court may withhold payment out of such estate of the sum or any part of the sum due for the Guardian's costs in respect of such estate; and may distribute the estate as if such costs were not payable by or out of the same.
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- 30 (4) There shall be paid to the said Guardian in respect of all business done after the commencement of this Act a fixed salary of such sum per annum as, in view of the amount of business done or to be done by the Guardian, and the sum at the credit of the said account, the said Judges shall think reasonable, and the Lieutenant-Governor in Council approve; which salary shall be over and above all necessary disbursements; and the salary and disbursements shall be paid monthly or otherwise as shall be determined by rule of Court, out of the fund at the credit of the said account of official Guardian *ad litem*, and not otherwise.
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- 40 (5) The surplus appearing from time to time at the credit of the said account beyond what may be required to pay the charges on the said account, shall be transferred to the "Suitors' Fee Fund Account."
- 45 (6) Where the official Guardian has occasion to employ a Solicitor in another County for the purpose of any proceeding in a suit, such Solicitor shall be entitled to receive from the official Guardian in respect of such proceeding the same costs as if the Solicitor so employed were Solicitor and Guardian of the Infant.
- 50 (7) The Official Guardian *ad litem* shall once every 6 months file in the Accountant's office an affidavit, shewing all costs recovered by him as Official Guardian *ad litem*, during the 6 months preceding the

making of such affidavit, giving therein the several amounts received by him, and the name or names of the suits and matters in which the same were respectively received by him, together with the date of receipt.

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- (8) When a new official Guardian *ad litem* is appointed, he shall *ipso facto* become, and be by virtue of such appointment, Guardian *ad litem* to all infants, in the place and stead of his predecessor, with the same duties and powers; and the latter (his executors or administrators, as the case may be) shall forthwith deliver over to the new Official Guardian all letters, papers, documents and books in his possession or power as Official or other Guardian *ad litem* of infants; and the new guardian shall forthwith communicate his appointment to whom it may concern. 10
- (9) The Lieutenant-Governor in Council, or the High Court, may order that the official Guardian is not to practise as a Barrister or Solicitor, and in such case he shall not, during the continuance of his appointment and of such order, directly or indirectly practise the profession of the law as Counsel or Solicitor, or as a Notary Public, or Conveyancer, or do any manner of conveyancing, or prepare any papers or documents to be used in any Court of this Province, except in the discharge of his duties as official guardian, or of any other duties which may be assigned to him by the said High Court or any Division or Judge thereof as the case may be; and the said official Guardian in case of his offending in the matter aforesaid shall be subject to a penalty of forfeiture of office, and the further penalty of \$400 to be recovered by any person who sues for the same by action in the High Court; and one half of such pecuniary penalty shall belong to the party suing, and the other half to Her Majesty for the use of the Province. 15 20 25 30 35
- (See R. S. O., c. 42, s. 5.)

Return.

**67.** The Accountant shall yearly and on or before the 15th day of January in every year transmit to the Lieutenant-Governor in Council a just, true and faithful statement, shewing the state of the "Account of official Guardian *ad litem*" upon the 31st day of the preceding December. (See R. S. O., c. 50, s. 121.) 40

Provisions as to property vested in Accountant.

**68.** In all cases in which any interest in real or personal estate, effects or property is vested in the Accountant for the time being of the High Court, as such Accountant and in respect of his office, all such real and personal estate, effects and property whatsoever, upon the death, resignation, or removal from office of each and every Accountant of the said Court from time to time, and as often as the case happens, and the appointment of a successor takes place, shall, subject to the same trusts as the same were respectively subject to, vest in the succeeding Accountant by force of this Act. (See R. S. O., c. 40, s. 32.) 45 50

- (2) In case of there being at any time no Accountant of the High Court, all mortgages, stocks, funds, annuities and securities whatsoever theretofore standing in the name of any Accountant, or in his custody or power in respect of his office, together with all the interest and estate of the said Accountant in the lands and premises embraced in such mortgages or other securities, shall become and be, by force of this Act, vested in such other officer as the High Court, by general order, may, from time to time, direct, subject to the same trusts as they may then respectively be subject to. (*See R. S. O., c. 40, s. 31.*)
- (3) All mortgages, stocks, funds, annuities and securities whatsoever, at the time of the commencement of this Act, standing in the name of the Accountant of the Court of Chancery, or of the Referee in Chambers, or any other officer named by the Court for the purpose under the authority of the 31st section of the Chancery Act, or in his custody or power as such Accountant, Referee in Chambers or other officer aforesaid, together with all the interest and estate of the said Accountant, Referec in Chambers or other officer, in the lands and premises embraced in such mortgages or other securities, shall become and be vested in the Accountant of the High Court for the time being, as such Accountant, or in such other officer as the Court by general order may from time to time direct, subject to the same trusts as they may then respectively be subject to. (*See R. S. O., c. 40, s. 31.*)
- 30 **69.** The expenses of the Accountant's Office including all salaries shall, from the 1st day of April, 1881, be the first charge on the income arising from the funds in Court. Expenses of Accountant's Office.
- 35 **70.** The Lieutenant-Governor may from time to time appoint one of the officers of the High Court, or some other competent person, to inspect the offices of the Sheriffs, Local Masters, Deputy Registrars, Deputy Clerks of the Crown, Local Registrars of the High Court, Registrars of Surrogate Court, Clerk of the Peace, and County Crown Attorneys, and Clerks of the County Court, in the respective Counties of the Province. Inspector of Sheriffs and other offices.
- 40
- The duty of the Inspector for the time being shall be :—
- (1) To make a personal inspection of the said offices and of the books and Court papers belonging thereto respectively ;
- 45 (2) To see that proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a proper manner, at proper times, and in a proper form and order, and that the Court papers and documents are properly classified and preserved ;
- 50 (3) To ascertain that the duties of the officers are duly and efficiently performed ;

- (4) To see that proper costs and charges only are allowed or exacted;
- (5) To ascertain that proper security has been given by any officer required by law to give security;
- (6) To ascertain whether uniformity of practice prevails in the several offices of the High Court and in the County and Surrogate Courts;
- (7) To report upon all such matters, as expeditiously as may be, to the Lieutenant-Governor. (*See* 43 Vic. c. 8, s. 23.)

Inquiries by  
Inspector.

71. When the said Inspector has occasion to institute an inquiry into the conduct of any officer in relation to his or their official duties or acts, it shall be lawful for the said Inspector to require such officer, or any other person or persons, to give evidence on oath; and for this purpose the said Inspector shall have the same power to summon such officers and other persons to attend as witnesses, to enforce their attendance, and to compel them to produce books and documents and give evidence, as any Court has in civil cases. (*See* 43, Vic. c. 8, s. 24.)

Books, etc., to  
be produced  
for inspection.

72. The said several officers shall, as often as required by the said Inspector, produce for examination and inspection all books and documents which are required to be kept by them, or which may hereafter be required to be kept by them; and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector shall require. (*See* 43 Vic. c. 8, s. 26.)

Powers of  
Commission-  
ers to admin-  
ister oaths.

73. Every person who at the commencement of this Act shall be authorized to take recognizances of bail, or to administer oaths and take affidavits and affirmations, in any of the Courts whose jurisdiction is hereby vested in the High Court of Justice, shall be a commissioner for the said purposes in all causes and matters whatsoever which may from time to time be depending in the said High Court. (*See* Imp. Act of 1873, s. 82; R. S. O., c. 63; c. 80.)

#### SOLICITORS.

Solicitors and  
attorneys.

74. From and after the commencement of this Act all persons heretofore admitted as solicitors or attorneys of, or by law empowered to practise in, any Court the jurisdiction of which is hereby vested in the High Court of Justice, shall be called Solicitors of the Supreme Court of Ontario, and shall be entitled to the same privileges, and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed.

- (2) All persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors or attorneys of, or been by law empowered to practise in, any such Courts, shall be entitled to be admitted on payment of the fees now required for admission to the Courts of Queen's Bench, Common

Pleas and Chancery, and shall be so admitted by any Divisional Court, and shall be called Solicitors of the Supreme Court of Ontario, and shall, as far as circumstances permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

- (3) Any solicitors or attorneys to whom this section applies shall be deemed to be officers of the said Supreme Court; and that Court, and the High Court of Justice and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of the Superior Courts or a Judge thereof might, previously to the passing of this Act, have exercised in respect of any solicitor or attorney admitted to practise therein. (*See Imp. Act of 1873, s. 87.*)

## PART VI.

### COUNTY COURTS AND JUDGES.

75. Section one of chapter 22 of the Acts of the Legislature of this Province, passed in the 32nd year of her Majesty's reign is repealed, and section two of chapter 15, of the Consolidated Statutes of Upper Canada shall not be affected by the said Act or by any other enactment of the Legislature of this Province heretofore passed and purporting to repeal the same.

76. The Judges of the several County Courts shall be Judges of the High Court for the purposes of their jurisdiction in actions in the High Court; and in the exercise of such jurisdiction may be styled "Local Judges of the High Court," and shall, in all causes and actions in the High Court, have, subject to Rules of Court, power and authority to do and perform all such acts, and transact all such business as the Judges of the County Courts have now in actions in the Courts of Queen's Bench and Common Pleas; and to do and perform such other acts and business in respect to matters and causes in and before the High Court as they may by Rules of Court in that behalf from time to time be empowered to do. (*See R. S. O., c. 39, s. 29; c. 40, s. 28; c. 50, s. 148; R. Sup. C., Order 35, R. 4; R. Sup. C., April, 1880, R. 11; Order 49, post.*)

77. Every County and Division Court shall as regards all causes of action within its jurisdiction for the time being, have power to grant and shall grant in any proceeding before such court such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as

might and ought to be done in the like case by the High Court of Justice. (*See Imp. Act of 1873, s. 89.*)

Counter-claims in County or Division Courts, and transfers therefrom.

**78.** Where in any proceeding before any such County or Division Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: 5 10

Proviso.

Provided always, that in such case it shall be lawful for the High Court or any Division or Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such court to the High Court, or to any Division thereof; and in such case the Record in such proceeding shall be transmitted by the Clerk or other proper officer, of the County or Division Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein. (*See Imp. Act of 1873, s. 90.*) 15 20

Surrogate Court fees of Judges.

**81.** The Lieutenant-Governor in Council may, with the consent of any County Court or Surrogate Court Judge, commute the fees payable to him under the Surrogate Courts Act for a fixed annual sum; such sum not to exceed the income derived from such fees in some preceding year; and any sum so fixed may, as vacancies occur, be rescinded, or may be varied and the amount increased or diminished; provided that in no case shall any Order in Council name a sum exceeding the receipts for fees during some preceding year. 25 30

- (2) In case of such commutation, the like sums and fees heretofore payable to such Judge shall continue to be payable, and shall form part of the Consolidated Revenue Fund of this Province, and shall be payable in stamps, subject to the provisions of the Act respecting Law Stamps. (*See R. S. O., c. 40, s. 16.*) 35
- (3) Where there is no commutation and the fees aforesaid exceed the sum of \$1,000 in any year, the excess shall be received by the Registrar and paid over to the Treasurer of the Province for the uses of the Province 40
- (4) The preceding sub-section shall not apply so as to reduce the amount payable to the Judge in any year to a sum less than the aggregate amount of the fees payable to him for such year in respect of fees provided for by the Consolidated Statutes of Upper Canada, chapter 16, schedule "B," and exclusive of the additional fees assigned to Surrogate Judges by the Act passed in the fortieth year of Her Majesty's reign, chapter 7, schedule "A" (65). 45 50
- (5) Out of the excess aforesaid a sum not exceeding \$666 may on the authority of an Order in Council be paid to the Junior Judge of the County (if any).

(6) This section, and the several sub-sections thereof, shall operate from the first day of January last.

82. The several rules of law enacted and declared by this Act shall be in force and receive effect in all courts whatsoever in Ontario, so far as the matters to which such rules relate shall be respectively cognizable by such courts. (See Imp. Act of 1873, s. 91.)

Rules of law to apply to Inferior Courts.

## PART VII.

### MISCELLANEOUS PROVISIONS.

83. Every Order in Council determining the commutation allowance or the salary of any Judge, Official Guardian or other officer, under the authority of this Act, shall be laid before the House of Assembly forthwith, if the Legislature is in session at the date of the Order, and if the Legislature is not then in session, the Order is to be laid before the said House within the first seven days of the session next after the Order in Council is made.

Orders in Council as to allowances and salaries subject to ratification by Legislative Assembly.

(a). In case the Assembly at the said session, or, if the session does not continue for three weeks after the said Order is laid before the House, then at the ensuing session of the Legislature, disapprove by resolution of such Order in Council, either wholly, or so far as relates to any of the persons therein named, the Order in Council, so far as so disapproved of, shall have no effect from the time of such resolution being passed.

84. All books, documents, papers and chattels in the possession of any Court the jurisdiction of which is hereby vested in the High Court of Justice, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be dealt with by such officer or person in such manner as the High Court of Justice or the Supreme Court may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court. (See Imp. Act of 1873, s. 92.)

Transfer of books and papers to Supreme Court.

85. Upon proof to the satisfaction of the Judge presiding at the sittings of any Court of the service of a subpoena upon any witness, who fails to attend, or to remain in attendance in accordance with the requirements of the subpoena, and that a sufficient sum for his fees as a witness had been duly paid or tendered to him, and that the presence of such witness is material to the ends of justice, the said Judge may, by his warrant, cause such witness to be apprehended and forthwith brought before him or any other Judge who may thereafter preside at such sittings, to give evidence, and in order to secure his presence as a witness, such witness may be taken on such warrant before the presiding Judge and detained in the custody of the person to whom the warrant is directed, or otherwise, as the presiding Judge may order, until his presence, as such witness, shall be required, or, in the discretion of the said Judge, he may be released on a recognizance (with or without sureties), conditioned for his appearance

Compelling attendance of witnesses.

to give evidence. (*See* 39 Vic., c. 36, Dom.; 32 and 33 Vic., c. 30, s. 26, Dom.)

Form of  
warrant.

**86.** Such warrant may be similar to form No. 189, in appendix J hereto, and may be directed to any sheriff or other officer of the court, or to any constable, and may be executed in any part of Ontario. 5

Saving as to  
circuits, etc.

**87.** This Act is not intended to affect, and shall not affect, the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commission for the discharge of civil or criminal business on circuit or otherwise; or the authority of a Judge or a retired Judge of any of the Superior Courts, or a Judge of a County Court, or one of Her Majesty's Counsel learned in the law, to preside without any commission at any Court of Assize, Oyer and Terminer, and General Gaol Delivery, or at a Court held under this Act in the exercise of the jurisdiction now belonging to Courts of Assize, Oyer and Terminer, and General Gaol Delivery, or the authority of any such Judge or retired Judge of a Superior or County Court, or Counsel learned in the law to hold any sitting for the hearing of causes; and any such Judge or Counsel shall after the commencement of this Act, have the same authority to preside as aforesaid, or to hold any sitting of the High Court for the hearing of causes in the High Court respectively, which such Judge or Counsel now has to preside at Courts of Assize, Oyer and Terminer, and General Gaol Delivery, or to hold a sitting of the Court of Chancery for the hearing of causes; and any such Judge or Counsel when presiding as aforesaid with or without a commission, or when holding any sitting as aforesaid, shall be deemed to constitute a Court. (*See* Imp. Act of 1873, s. 93; C. S. U. C., c. 11, ss. 2-6; 29 and 30 Vic., c. 39; R. S. O., c. 39, ss. 27, 28; c. 40, ss. 23-27; c. 41, ss. 1-10.) 10 15 20 25 30

This act not to  
apply to certain  
matters.

**88.** Nothing in this Act, or in the Schedule thereto, affects or is intended to affect, the practice or procedure in criminal matters, or matters connected with Dominion Controversed Elections, or proceedings on the Crown or Revenue side of the Queen's Bench or Common Pleas Divisions. (*See* Imp. Act of 1875, ss. 19, 21; R. Sup. C., Order 62; R. Sup. C., April, 1880, R. 54.) 35

Justices of the  
Peace in Nipissing,  
qualification of.

**89.** It shall not be necessary for any Justice of the Peace heretofore or hereafter appointed, for the temporary judicial district of Nipissing, to possess any property qualification whatever, or to be a stated resident within the said district. (R. S. O., c. 7, s. 7). 40

Inspection,  
etc., of Court  
Houses.

**90.** The provisions of the Prison and Asylum Inspection Act, chapter 224 of the Revised Statutes, as to the inspection, construction and repairing of Gaols, shall apply to Court Houses, and the said provisions shall so far as applicable be read as if the words Court House or Court Houses were inserted after the words Gaol or Gaols in the said Act. 45 50

#### REPEAL.

Repeal.

**91.** From and after the commencement of this Act there shall be repealed, so far as relates to this Province:—

- 5 (1) Sections 15 and 16 of a certain Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the fifth and sixth years of the reign of His Majesty King William the Fourth, and chaptered 62; without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed. (*See Imp. Act 22 and 23 Vic., c. 12, s. 2.*)
- 10 (2) Any enactment inconsistent with this Act. (*See Imp. Act of 1875, s. 33.*)
- 15 (3) Section 3 of the Act respecting the Heir, Devisee and Assignee Commission, chapter 25 of the Revised Statutes, so far as relates to any Judge, who was not appointed until after the 7th of March, 1879, or who may be hereafter appointed. (*See Journ. L. A., March 7, 1879, p. 186.*)

#### INTERPRETATION.

91. In the construction of this Act and of the Rules, unless there is anything in the subject or context repugnant thereto the several words hereinafter mentioned shall have, or include the meanings following (that is to say):

Interpretation  
of terms.

- 20 "Rules of Court" shall include forms.
- "Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant.
- "Suit" shall include action.
- 25 "Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of Court; and shall not include a criminal proceeding by the Crown.
- 30 "Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.
- 35 "Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.
- "Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings.
- 40 "Party" shall include every person served with notice of, or attending any proceeding, although not named on the Record.
- "Matter" shall include every proceeding in the Court not in a cause.
- 45 "Pleading" shall include any petition or summons, and shall also include the statement in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.
- 50 "Judgment" shall include decree.

“Order” shall include rule.

“Oath” shall include solemn affirmation and statutory declaration.

“Existing” shall mean existing at the time appointed for the commencement of this Act. (See Imp. Act of 1873, s. 100.)

“Proper Officer” shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows:—

(a) Where any duty to be discharged under this Act or the Rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same, until otherwise provided by Rule ;

(b) Where any new duty is under this Act or the Rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same, in the case of an officer of the High Court of Justice, not attached to any Division, by the President of the High Court, and in the case of an officer attached to any Division, by the President of the Division. (See Imp. Act of 1875 Order 63.)

## SCHEDULE.

## RULES OF COURT.†

[NOTE.—Where no other provision is made by the Act or these Rules the present procedure and practice remain in force. See sections 12 & 47 of this Bill, *ante*; Order 1, R. 4. *post*.]

## ORDER I.

## FORM AND COMMENCEMENT OF ACTION.

1. All actions which have hitherto been commenced by writ <sup>1</sup> *Action.* in the Superior Courts of Common Law, and all suits which have hitherto been commenced by bill or information in the Court of Chancery, shall be instituted in the High Court of Justice by a proceeding to be called an action. (Comp. R. Sup. C., 1875, Order 1, R 1.)
2. With respect to interpleader, the procedure and practice <sup>2</sup> *Interpleader.* now used by Courts of Common Law under the Interpleader Act R. S. O., chapter 54, save as altered by any Act passed during the present Session of the Legislature, shall apply to all actions and to all the Divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence. (Comp. *Ib.*, R. 2.)
3. The orders of the Court of Chancery numbered from 467 <sup>3</sup> *Certain Chy. orders to apply to all Divisions.* to 487, and those numbered from 638 to 650, shall apply to all the Divisions of the High Court of Justice.
4. All other proceedings in and applications to the High <sup>4</sup> *Other proceed-ings.* Court may, subject to these Rules, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if the Act had not been passed. In case a defendant is let in to defend under the 11th section of the Revised Statute respecting absconding debtors, the action shall proceed as in ordinary cases under the Act, subject to the provisions in other respects of the said Revised Statute. (Comp. *Ib.*, R. 3, R. S. O. c. 68.)

## ORDER II.

## WRIT OF SUMMONS AND PROCEDURE, &amp;c.

1. Every action in the High Court shall be commenced by a <sup>5</sup> *Writ.* writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and specifying the Division of the High Court to which the action is assigned. (Comp. R. Sup. C., Order 2, R. 1; R. Sup. C., Schedule A.; R. S.O., c. 50, ss. 3, 29 *et seq.*; c. 67, s. 8 *et seq.*; c. 137.)

† (NOTE.—In addition to the Rules contained in the Schedule to the English Judicature Act, 1875, the following additional or amending Rules have been issued, viz.:—Rules of Supreme Court August, 1875; December, 1875; February, 1876; June, 1876; December, 1876; May, 1877; June, 1877; November, 1878; December, 1879; April, 1880; May, 1880. All, so far as they were considered useful and applicable here, are, with more or less variation, embodied in the present Schedule, which contains other rules also.)

- 6**  
Costs of improper form. 2. Any costs occasioned by the use of any more prolix or other forms of writs and of indorsements thereon, than the forms hereinafter prescribed, shall be borne by the party using the same unless the Court shall otherwise direct. (R. Sup. C., Order 2, R. 2.)
- 7**  
Form of Writ 3. Where the service is to be made in Ontario, the writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Form No. 1 in Appendix (A) hereto, with such variations as circumstances may require. (*Ib.*, R. 3.)
- 8**  
Writ and notice for service out of jurisdiction. 4. Where there is jurisdiction in any of the Superior Courts to proceed with a suit on a service out of Ontario, the writ of summons to be so served shall be in Form No. 2, in Appendix (A) hereto, with such variations as circumstances may require. Where a defendant is not a British subject, and is not in British Dominions, notice of the writ of summons is to be served in lieu of service of the writ, and such notice shall be in Form No. 3 in the same Part, with such variations as circumstances may require. (Comp. *Ib.*, R. 5, schd., forms 2, 3; R. S. O., c. 50, ss. 48-53; G. O. Chy., Nos. 90-102; Eng. C. L. P. Act of 1852, s. 19.)
- 9**  
Date and teste of Writ. 5. Every writ of summons and every other writ shall bear date on the day on which the same is issued, and shall be tested in the name of the President of the High Court of Justice, and shall require the defendant to appear thereto in 10 days after service, if the service is to be made in Ontario. (Comp. R. Sup. C., Order 2, R. 8.)
- 10**  
Amendment of Writ. 6. The Court or a Judge may, at any stage of the proceedings, allow the plaintiff to amend the writ of summons, in such manner and on such terms, as may seem just. (*See* R. Sup. C., Feb'y, 1876, R. 6.)

### ORDER III.

#### INDORSEMENTS OF CLAIM, &C.

- 11**  
Precise statement not essential. Amendment. 1. In the indorsement required by Order 2, Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the Court or Judge amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief. (*Ib.*, R. 2.)
- 12**  
Form of indorsement. 2. The indorsement of claim may be to the effect of such of the forms in Part II. of Appendix (A) hereto as shall be applicable to the case, or if none be found applicable then of such other similarly concise form as the nature of the case may require. (*Ib.*, R. 3.)
- 13**  
Where action is in representative capacity. 3. If the plaintiff sues in a representative capacity, or if the defendant or any of the defendants is sued in a representative capacity, the indorsement shall shew, in manner appearing by the statement in Appendix (A) hereto, Part II., sec. V., or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued. (Comp. *Ib.*, R. 4.)
- 14**  
Special indorsement. 4. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest,—arising upon a contract, express

or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust,—the writ of summons may be specially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off. (*Ib.*, R. 6; Comp. R. S. O., c. 50, s. 19.)

5. Where the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs, respectively, and shall further state that upon payment thereof within 8 days after service, or, in case of a writ not for service within the jurisdiction, within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix (A) hereto, Part II., sec. II. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation. (Comp. R. Sup. C., Order 3, R. 7; R. S. O., c. 50, s. 18.)

15

Indorsement  
in cases of debt  
or liquidated  
demand.

6. In all cases of ordinary account, as, for instance, in the case of a partnership, or executorship, or ordinary trust account, where the plaintiff desires to have an account taken in the first instance, the writ of summons shall be indorsed with a claim that such account be taken. This rule does not apply to proceedings under Order I., Rule 3. (*See* R. Sup. C., Order 3, R. 8; G. O. Chy., Nos. 467 *et seq.*; 638 *et seq.*)

16

Indorsement  
of claim for  
account.

7. Where the claim is for the foreclosure of a mortgage or the sale of mortgaged property, and the plaintiff desires an order against a defendant for the immediate delivery of possession, or for immediate payment, the writ must, in addition to the ordinary notice, be indorsed with a further notice to the effect of such of the forms in Appendix (A) hereto, Part II., section VI., as are applicable to the case. (*See* G. O. Chy., No. 647.)

17

Indorsement  
in mortgage  
suits where  
immediate  
possession or  
payment  
desired.

8. Where a plaintiff sues by a solicitor, the writ of summons or notice in lieu of service of a writ of summons, shall be indorsed with the solicitor's name or firm and place of business, where writs, notices, petitions, orders, warrants and other documents, proceedings, and written communications may be left for him.

18

Address of  
plaintiff and of  
solicitor.

(a) Where any such solicitor is only agent of another solicitor, there shall be added to his name or firm and place of business the name or firm and place of business of the principal solicitor. (Comp. R. Sup. C., Order 4, R. 1; R. S. O., c. 50, s. 16; G. O. Chy., Nos. 40, 41.)

9. Where a plaintiff sues in person, there shall be indorsed upon the writ of summons, or notice in lieu of service of a writ of summons, his place of residence and occupation.

19

Address of  
plaintiff in  
person.

(a) If his place of residence shall be more than 2 miles from the office out of which the first process in the cause shall be issued, there shall be indorsed also another proper place, to

be called his address for service, which shall not be more than 2 miles from such office, where writs, notices, petitions, orders, warrants and other documents, proceedings, and written communications not requiring personal service may be left for him.

(b) If the writ or notice is not so indorsed, or if such address or place be more than 2 miles from the office aforesaid, then the opposite party shall be at liberty to proceed by posting up in such office all notices, petitions, orders, warrants and other documents, proceedings and written communications requiring service. (Comp. R. Sup. C., Order 4, R. 2; R. S. O. c., 50, s. 17; Rules of T. T., 1856, No. 138, Ont.; G. O. Chy., No. 44.)

20  
Plaintiff's  
option as to  
place of issue.

10. In any action whatever the plaintiff wherever resident may issue a writ of summons out of the proper office in Toronto, or in any County. (See R. Sup. C., Order 5, R. 1; R. S. O., c. 50, s. 10; G. O. Chy., No. 77.)

21  
Officers to  
issue Writs.

11. Until otherwise ordered, writs of summons for the commencement of actions in the Queen's Bench and Common Pleas Divisions, shall be issued by the same officers as now issue like writs for the Courts of Queen's Bench and Common Pleas respectively, and shall be issued alternately in the Queen's Bench and Common Pleas Divisions, as the case may be, as heretofore in the said Courts. Writs for the commencement of actions in the Chancery Division shall be issued by the proper officers hitherto attached to the Court of Chancery. Writs issued by the Clerk of Records and Writs, or by a Deputy Registrar or Deputy Clerk of the Crown and Pleas need not be sealed or signed by the Clerk of the Process. (See R. S. O., c. 39, s. 44; c. 50, s. 3. *et seq.*; G. O. Chy., Nos. 34-39; R. Sup. C. Order, 5, R. 4.)

22  
Statement as  
to appearance.

12. In all cases there shall be a statement on the face of the writ of summons naming the office in which the defendants' appearance is to be entered. (Comp. R. Sup. C., Order 5, R. 2, 3; R. S. O., c. 50, Sch. A, Form 1; G. O. Chy., No. 86, Sch. C.)

23  
Preparation of  
writ.

13. Writs of summons shall be prepared by the plaintiff or his Solicitor, and may be written or printed, or partly written and partly printed. (Comp. R. Sup. C., Order 5, R. 5.)

24  
Sealing and  
issue of writ.

14. Every writ of summons shall be signed and sealed by the officer issuing the same, and shall thereupon be deemed to be issued. (*Ib.*, R. 6.)

25  
Filing.

15. The plaintiff or his Solicitor may, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, of such writ and of all the indorsements thereon, and such copy shall be signed by or for the Solicitor leaving the same, or by the plaintiff himself, if he sues in person. (R. Sup. C., Order 5, Rule 7.)

26  
Entry.

16. The proper officer shall make an entry of every writ of summons in a book to be called the Process Book, which is to be kept in the manner in which process books have heretofore been kept by the Clerks of the Crown and Pleas; and the action shall be distinguished by a number in the manner in which actions are now distinguished in such last mentioned books; and in case of any further proceeding in the action, an entry thereof shall be made in another book to be called the Procedure Book, which is to be kept in the manner in which Procedure Books have heretofore been kept by the said Clerks. (Comp. *Ib.* R. 8.)

17 The plaintiff in any action may, at the time of, or at any time during 12 months after, the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked by the officer issuing the same with the word "concurrent," in the margin, and the date of issuing the concurrent writ: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force. (Comp. R. Sup. C., Order 6, R. 1; R. S. O., c. 50, s. 26.)

27  
Plaintiff may  
issue concurrent writs.

18. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction. (R. Sup. C., Order 6, R. 2.)

28  
Concurrent writs for service within and without the jurisdiction.

#### ORDER IV.

##### DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose name shall be signed to or indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity.

29  
Whether writ issued by his authority.

(a) If he answers in the affirmative, then he shall also, in case the Court or a Judge so directs, disclose in writing, within a time to be limited by such Court or Judge, the profession or occupation, and place of abode of the plaintiff, on pain of being guilty of a contempt of the Court from which such writ appears to have issued.

(b) If such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge. (Comp. R. Sup. C., Order 7, R. 1; R. S. O., c. 50, s. 56; Eng. C. L. P. Act of 1852, s. 7.)

2. Where a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitor, shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm.

30  
Names and addresses of members of firm suing as partners.

(a) If the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct.

(b) Where the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the writ; but all proceedings shall, nevertheless, continue in the name of the firm. (R. Sup. C., Order 7, R. 2.)

#### ORDER V.

##### RENEWAL OF WRIT.

1. No original writ of summons shall be in force for more than 12 months from the day of the date thereof, including the

31  
Currency of writ.

day of such date ; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the 12 months, apply to a Judge for leave to serve the writ after, and notwithstanding the lapse of, the said period ;

(a) The Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the service shall be good if made within 12 months from the date of the order ; and so from time to time during the currency of the further period allowed.

(b) The writ shall in such case be renewed by being marked with the date of the day, month and year of such renewal ; such renewal to be so marked by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 75, in Appendix E.

(c) In such case the original writ shall be available, to prevent the operation of any statute whereby the time for the commencement of the action is limited and for all other purposes, from the date of the original issue of the writ. (Comp. R. Sup. C., Order 8, R. 1 ; R. S. O., c. 50, ss. 27-29 ; G. O. Chy., Nos. 93-98.)

32  
Evidence of  
renewal.

2. The production of a writ of summons purporting to have been renewed in manner aforesaid shall be sufficient *prima facie* evidence for all purposes, of the writ having been so renewed, and of the commencement of the action as of the date of the issue of the writ in manner provided as aforesaid. (Comp. R. Sup. C., Order 8, R. 2 ; R. S. O., c. 50, s. 28 ; Eng. C. L. P. Act of 1852, s. 13.)

## ORDER VI.

### SERVICE OF WRIT OF SUMMONS.

#### 1.—*Mode of Service.*

33  
Undertaking  
to accept  
service.

1. No service of writ shall be required where the defendant by his solicitor accepts service, and undertakes to enter an appearance. (R. Sup. C., Order 9, R. 1 ; G. O. Chy., No. 47.)

34  
Personal and  
substituted  
service.

2. Where service is required the writ shall, wherever it is practicable, be served by the same person and in the same manner as service is now made ; and where personal service is required, if it be made to appear to the Court or Judge on affidavit that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just. (R. Sup. C., Order 9, R. 2 ; *Ib.*, Order 10 ; R. S. O., c. 16, ss. 32, 33 ; c. 40, s. 95 ; c. 50, ss. 20, 23 ; Eng. C. L. P. Act of 1852, s. 17 ; G. O. Chy. Nos. 99-102 ; Eng. Cons. Orders, No. 10 R. 6, 7.)

#### 2.—*On particular Defendants.*

35  
Married  
Woman.

3. A married woman shall be served in the same manner as a party to a suit or matter not under any disability, is now served ; and the like proceedings may be had on such service and with the like effect, as if the married woman were a *feme sole*. (See G. O. Chy., No. 613 ; R. S. O., c. 125, s. 20.)

36  
Service on  
official guar-  
dian.

4. Where the action is for the administration or partition of an estate in which an infant is interested or where the action is for any purpose other than the recovery of money from an infant defendant personally, or of lands, goods or chattels, of

which he is personally in possession, service on the official guardian shall be good service on the infant defendant if such infant defendant is resident in Ontario, at the time of such service.

(a) If in such case there is more than one infant defendant, for whom service is to be made on the official guardian, one copy only need be so served.

(b) From the time of such service the official guardian shall become and be the guardian *ad litem* of the infant, unless and until the Court otherwise orders; and it shall be his duty forthwith to attend actively to the interests of the infant in the action, and for that purpose to communicate with all proper parties, including the father or guardian (if any) of the infant, and also the person with whom or under whose care the infant resides, in case such person is not the infant's father or guardian; and the guardian is to make such other inquiries and to take such other proceedings as the interests of the infant may require.

(c) Any person interested may move before a judge in Chambers, on such material as he may think proper, for an order appointing a guardian other than the official guardian so served; whereupon such order as may be considered most conducive to the interests of the infant shall be made, and a copy of the order shall forthwith be served on the official guardian. (R. Sup. C., Order 9, R. 4; G. O. Chy., Nos. 517-520, 610-612, 616,

5. Where an action is brought against an infant defendant, for the recovery of money from him personally or for the recovery of lands, goods, or chattels of which he is personally, in possession, service shall be made on the infant personally, and one copy of the writ shall also be posted (prepaid) to, or delivered at the office of, the official guardian. (R. Sup. C., Order 9, R. 4; G. O. Chy., Nos. 517-520).

37  
Service on  
infant  
personally.

6. Where a lunatic or person of unsound mind not so found by inquisition or judicial declaration, is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on such defendant. (Comp. R. Sup. C., Order 9, R. 5; R. S. O., c. 40, s. 70; c. 220, ss. 49-51; G. O. Chy., Nos. 517-520.)

38  
Lunatic.

7. No further proceedings are to be taken against such a defendant who has no committee, until a guardian *ad litem* is appointed. (See G. O. Chy., No. 518.)

39  
Guardian *ad*  
*litem*.

### 3.—On Partners and other Bodies.

8. Where partners are sued in the name of their firm, the writ shall be served either upon any one or more of the partners, or, at the principal place within Ontario of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there; and, subject to the rules hereinafter contained, such service shall be deemed good service upon the firm. (R. Sup. C., Order 9, R. 6.)

40  
Partners.

9. Where one person carrying on business in the name of a firm apparently consisting of more than one person, shall be sued in the firm name, the writ may be served at the principal place within Ontario of the business so carried on, upon

41  
Person doing  
business under  
name of firm.

any person having at the time of service the control or management of the business there; and subject to any Rules of Court, such service shall be deemed good service on the person so sued. (R. Sup. C., June, 1876, R. 4.)

**42**  
Corporations.

10. Where, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided. (R. Sup. C., Order 9, R. 7; R. S. O., c. 50, ss. 21, 22; c. 149, s. 43; c. 150, s. 60.)

**43**  
Action to  
recover land.

4.—*In particular Actions.*

11. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property. (R. Sup. C., Order 9, R. 8; comp. R. S. O., c. 51, s. 8.)

**44**  
Indorsement  
of service.

5.—*Generally.*

12. The person serving a writ of summons shall, within 3 days at most after such service, indorse on the writ the day of the month and week of the service thereof; otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default without the leave of a Judge, such leave to be obtained at the cost of the plaintiff, and such cost to be in no event charged against the defendant.

(a) Every affidavit of service of such writ shall mention the day on which such indorsement was made. (R. Sup. C., Order 9, R. 13; comp. R. S. O., c. 50, s. 25, Eng. C. L. P., Act of 1852, s. 15).

ORDER VII.

SERVICE OUT OF ONTARIO.

**45**  
Service out of  
Ontario:  
in what cases.

(Comp. R. S. O., c. 50, s. 48; R. Sup. C., Order 2, R. 4; *Ib.*, Order 11; R. Sup. C., June, 1876, R. 5; G. O. Chy., Nos. 90, 100, 102, 620.)

1. Service out of Ontario of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge in the following cases:—

(a) Where the whole or any part of the subject-matter of the action is land, stock, or other property, situate within Ontario, or is any act, deed, will, or thing affecting such land, stock or property;

(b) Where the contract, which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within Ontario;

(c) Where there has been a breach within Ontario of any contract wherever made;

(d) Where any action or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done, or is situate, within Ontario;

Procedure  
in case of  
neglect to ap-  
pear.

(e) Where the action is upon a contract or judgment though the same be not within any of the four classes already enumerated, but it appears to the satisfaction of the Court or a Judge that the defendant has assets in Ontario of the value

of \$200 at least which may be rendered liable to the judgment in case the plaintiff should recover judgment in the action; and if the defendant does not appear, the Court or a Judge is to give any directions which the Court or Judge from time to time sees fit as to the manner of proceeding in the action, and the conditions on which the same may be proceeded with; and shall require the plaintiff before obtaining judgment to prove his claim and the amount of debt or damages (if any) to the satisfaction of the Court or Judge, and in such mode as the Court or Judge, having reference to the nature of the case, may direct. (*See* R. Sup. C., Order 11, R. 1; R. S. O., c. 50, ss. 50, 51.)

2. Where a defendant is served out of Ontario he shall have the time following for entering his appearance and delivering his defence, and both proceedings shall be taken within the time named. 46  
Time for  
defending.

(a) If the defendant is served within any part of the Dominion of Canada (other than Ontario, Manitoba, Keewatin or the North West Territories, or British Columbia,) or within the United States of America, he is to have 6 weeks after such service.

(b) If served within any part of the United Kingdom (including the Isle of Man and the Channel Islands), or of Manitoba, Keewatin or the North West Territories, British Columbia, or Newfoundland, he is to have 8 weeks after such service.

(c) If served elsewhere than within the limits above designated, he is to have 12 weeks after such service.

(d) The writ of summons in such case may be in the form set forth in Appendix (A), and the statement of claim is to be served therewith.

(*See* G. O. Chy., No. 620.)

3. The High Court shall have the jurisdiction heretofore possessed by any or either of the courts hereby consolidated, to direct in certain cases, on application in that behalf, that service in any other manner may be good service, or that the time for defending shall be other than the time above named, or to give any special or other direction as respects proceeding against a defendant out of Ontario. (*See* R. S. O., c. 50, ss. 48-51; G. O. Chy., Nos. 102, 621.) 47  
Saving of  
existing  
jurisdiction.

4. It shall not be necessary before serving the writ, or notice of the writ, to apply to the Court or Judge to allow the service; but in case proof is given to the satisfaction of the Court or Judge that the service was duly made and that the case was a proper one for service out of the Province under the preceding rules, the service shall be allowed. (R. S. O., c. 50, ss. 49, 51.) 48  
Service made  
without pre-  
vious order  
may be  
allowed.

5. Notice in lieu of service shall be given in the manner in which writs of summons are served. (*See* R. S. O., c. 50, s. 50.) 49  
Service of no-  
tice in lieu of  
writ.

## ORDER VIII.

### APPEARANCE, &C.

1. All proceedings to final judgment in actions shall be carried on in the office from which the writ of summons was issued, except where by any Rule of Court it may be otherwise provided, or where a Court or Judge shall otherwise direct. (*See* Imp. Act of 1873, s. 64; R. Sup. C., Order 12, R. 1-5; R. Sup. C., June, 1876, R. 12; G. O. Chy., No. 35; R. S. O., c. 50, ss. 12, 303.) 50  
Appearance,  
where entered.

- 51**  
How entered. 2. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing, dated on the day of delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. (Comp. R. Sup. C., Order 12, R. 5; R. S. O., c. 50, ss. 61-62; R. Sup. C., Feb'y. 1876, R. 5; R. Sup. C., April, 1880, R. 6.)
- 52**  
Address of Solicitor. 3. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business. (Comp. R. Sup. C., Order 12, R. 7.)
- 53**  
Address of defendant in person. 4. A defendant appearing in person shall state in such memorandum his address; and if he resides more than 2 miles from the office from which the writ of summons was issued, he shall state in such memorandum a place to be called his address for service, which shall not be more than 2 miles from such office. (Comp. *Ib.*, R. 8; R. S. O., c. 50, s. 61.)
- 54**  
Where no address or improper address given. 5. If the memorandum does not contain the address of the solicitor or the defendant (as the case may be) as required by the preceding rules, the memorandum shall not be received; and if such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff; and the plaintiff may be permitted, by the Court or a Judge, to proceed by posting up the proceedings in the office from whence the writ was issued. (Comp. R. Sup. C., Order 12, R. 9; R. S. O., c. 50, s. 61.)
- 55**  
Form of memorandum. 6. The Memorandum of Appearance may be in the Form No. 76, Appendix (E), with such variations as the circumstances of the case may require. (Comp. R. Sup. C., Order 12, R. 10; R. S. O., c. 50, s. 62.)  
(a) In case a defendant does not require the plaintiff to deliver a statement of claim he shall so state in his memorandum of appearance, and in that case shall serve a copy of such appearance on the plaintiff. (*See* R. Sup. C., April, 1880, R. 6.)
- 56**  
Entry of memorandum. 7. Upon receipt of a Memorandum of Appearance, the officer shall forthwith enter the appearance in the Procedure Book. (R. Sup. C., Order 12, R. 11; *See* Rules of T. T., 1856, No. 1, Ont.)
- 57**  
Partners. 8. Where partners are sued in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. (R. Sup. C., Order 12, R. 12.)
- 58**  
Appearance by person sued under firm name. 9. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. (R. Sup. C., June, 1876, R. 6.)
- 59**  
Two or more defendants, etc. 10. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum. (R. Sup. C., Order 12, R. 13; Rules of T. T., 1856, No. 2, Ont.)
- 60**  
Solicitor's undertaking. 11. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment. (R. Sup. C. Order 12, R. 14; Rules of T. T., 1856, No. 3, Ont.; Rules of Hilary Term, 1853, No. 3, Eng.)
- 61**  
When appearance may be entered and when notice is to be given. 12. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he

shall not, unless the Court or a Judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ; and if the defendant appears after the time appointed by the writ, and omits to give such notice of his appearance, the plaintiff may proceed as in case of non-appearance. (R. Sup. C., Order 12, R. 15; R. S. O., c. 50, s. 60.)

13. Any person not named as a defendant in the writ of summons for the recovery of land, may, without leave, appear and defend, by filing with his appearance an affidavit stating that he is in possession of the land either by himself or his tenant (as the case may be), and stating further, in case the possession is by his tenant, that the defendant named in the writ is his tenant. The affidavit may be in the form of affidavit numbered 33, in appendix C. 

62

Appearance by person not named as a defendant.

14. Where the preceding rule does not apply, any person not named as a defendant in a writ of summons for the recovery of land, may, by leave of the Court or Judge, appear and defend, on filing an affidavit shewing that he is in possession of the land, either by himself or his tenant. (R. Sup. C., Order 12, R. 18; R. S. O., c. 51, s. 10; Eng., C. L. P. Act of 1852, s. 172.) 

63

Appearance by landlord in action for land.

15. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession in person or by his tenant, shall state in his appearance that he appears as landlord. (R. Sup. C., Order 12, R. 19; Comp. R. S. O., c. 51, s. 12.) 

64

Form of appearance by landlord.

16. Where a person not named as defendant in a writ of summons for the recovery of land enters an appearance according to either of the foregoing Rules, the appearance shall be entitled in the action against the party or parties named in the writ as defendant or defendants; and the person so entering an appearance shall forthwith give notice thereof to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action; and if such person appears and omits to give notice of his appearance, the plaintiff may proceed as in case of non-appearance. (Comp. R. Sup. C., Order 12, R. 20; Rules of T. T. 1856, No. 93, Ont.) 

65

Notice of appearance by person not named as a defendant in writ.

17. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance; or in a notice intituled in the cause and signed by him or his solicitor, such notice to be served within 4 days after appearance upon the solicitor whose name is indorsed on the writ, if any; and if none, then filed in the proper office; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole. (R. Sup. C., Order 12, R. 21; Comp. R. S. O., c. 51, s. 13.)

66

Limited appearance in action for land.

Notice.

18. The notice to be served as mentioned in the last preceding Rule may be in the Form No. 14 in Appendix (B) hereto, with such variations as circumstances may require. (Comp. R. Sup. C., Order 12, R. 22.)

67

Form of notice.

19. Any person appearing to a writ of summons in other cases may limit his defence to the question of the amount to which the plaintiff is entitled, and in that case may in his appearance, or by notice served within 4 days thereafter, state that he disputes only the amount claimed by the plaintiff; and he need not file any further defence for the purpose of dis-

68

Limitation of defence as to amount claimed only.

puting such amount; and the plaintiff is to proceed as if the defendant had filed a defence disputing the amount of the claim. The notice disputing the amount of the claim may be in the Form No. 15, in Appendix (B) hereto, with such variations as circumstances may require.

## ORDER IX.

### DEFAULT OF APPEARANCE.

**69**  
By person of unsound mind. 1. Where no appearance has been entered to a writ of summons for a defendant who is a person of unsound mind not so found by inquisition, or judicial declaration in lieu of an inquisition, the plaintiff may apply to the Court or a Judge for an order that the official guardian or some other proper person be assigned guardian of such defendant, by whom he may appear and defend the action.

(a) But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of the application was, after the expiration of the time allowed for appearance, and at least 6 clear days before the day in the notice named for hearing the application, served upon, or left at the dwelling-house of, the person with whom or under whose care such defendant was at the time of serving such writ of summons. (Comp. R. Sup. C., Order 13, R. 1; G. O. Chy., Nos. 519, 520; R. S. O., c. 40, s. 65.)

**70**  
By Infants.

2. In case of an infant defendant, who has been served with a writ of summons, otherwise than by the same being served on the official guardian, if no guardian *ad litem* is appointed within 7 days after the time for appearance had expired, the plaintiff may serve the official guardian with notice of the said particulars; whereupon from the time of such service the official guardian shall become and be the guardian *ad litem* of the infant, unless and until the Court otherwise orders; and it shall be his duty forthwith to attend actively to the interests of the infant in the action, and for that purpose to communicate with all proper parties, including the father or guardian (if any) of the infant, and also the person with whom or under whose care the infant resides, in case such person is not the infant's father or guardian; and the guardian is to make such other inquiries and take such other proceedings as the interests of the infant may require. (G. O. Chy., Nos. 610, 611.)

**71**  
Proceedings in default of appearance.

3. Where any defendant fails to appear to a writ of summons and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order 11, Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, or the undertaking of the defendant's solicitor accepting service and agreeing to enter an appearance, with an affidavit verifying the undertaking filed, as the case may be. (R. Sup. C., Order 13, R. 2.)

**72**  
Where writ specially indorsed.

4. In case of non-appearance by the defendant where the writ of summons is specially indorsed under Order 3, Rule 4, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, and the plaintiff may, at the expiration of 8 days from the last day for appearance, and not before, issue execution upon such judgment; but it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms

as may seem just. (*Ib.*, R. 3; R. S. O., c. 50, s. 64; Eng. C. L. P. Act of 1852, s. 27.)

5. Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money under Or der 3, Rule 4, and one or more of the defendants appear to the writ, and others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment, without prejudice to his right to proceed with his action against such as have appeared. (Comp. R. Sup. C., Order 13, R. 4; R. S. O., c. 50, s. 69; Eng. C. L. P. Act of 1852 s. 33.)

73  
Where several  
defendants.

6. Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need afterwards be delivered, but the plaintiff may file an affidavit of service of the summons, or of notice in lieu of service, as the case may be, and file and serve a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of 8 days, enter final judgment for the amount shewn thereby, and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ, besides costs. (Comp. R. Sup. C., Order 13, R. 5; R. S. O., c. 50, s. 65; Eng. C. L. P. Act of 1852, s. 28.)

74  
Where writ  
not specially  
indorsed.

7. Where the defendant fails to appear to the writ of summons and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered, and the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons shall be assessed as hitherto, or at the County Court of the County in which the action is brought if the solicitors for all parties reside in such County; or the High Court or a Judge thereof, may order that the value and amount of damages, or either of them, shall be ascertained in any other way in which any question arising in an action may be tried. (Comp. R. Sup. C., Order 13, R. 6; R. S. O., c. 50, s. 65; Eng. C. L. P. Act of 1852, ss. 28, 94.)

75  
Where claim  
for detention  
of goods and  
pecuniary  
damages.

8. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply. (Comp. R. Sup. C., Order 13, R. 7; R. S. O., c. 51, s. 20; Eng. C. L. P. Act of 1852, s. 177.)

76  
Action for  
land.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned, for the land; and may proceed as in the other preceding Rules of this order, as to such other claim so indorsed. (R. Sup. C., Order 13, R. 8; R. S. O., c. 51, s. 70; Eng. C. L. P. Act of 1856, s. 257.)

77  
Assessment of  
damages in ac-  
tion for land.

10. Where the action is in respect of a mortgage, and the plaintiff claims foreclosure or sale or redemption, or where the action is for the administration of an estate, or for a partition, the plaintiff shall be entitled to a judgment or order on *præcipe* to

78  
Judgment on  
præcipe in  
certain  
cases.

the Registrar, Deputy-Registrar, Local Registrar, or Clerk or Deputy-Clerk of the Crown and Pleas, as the case may be, on such evidence (if any) and in such cases (as nearly as may be), as provided for by the present practice of the Court of Chancery in that behalf. (G. O. Chy. Nos. 38, 435-436, 645-648.)

79  
Judgment  
where plaintiff  
not entitled to  
judgment on  
præcipe.

11. Where the action is for the foreclosure or redemption of a mortgage, or sale of mortgaged premises, if the plaintiff is not entitled to a judgment or order on *præcipe*, or would not according to the practice of the Court of Chancery be entitled on *præcipe* to such a judgment or order as he desires, he shall be entitled to the proper judgment or order, on notice or otherwise, according to the practice of the Court of Chancery where a cause is heard on an order to take the bill *pro confesso* or otherwise. (See G. O. Chy., Nos. 113 *et seq.*, 432-434.)

#### ORDER X.

##### 80 LEAVE TO SIGN JUDGMENT WHERE WRIT SPECIALLY INDORSED.

Leave to sign  
final judg-  
ment.

1. Where the defendant appears to a writ of summons specially indorsed, under Order 3, Rule 4, and the plaintiff is not entitled to a judgment or order, under the preceding Order, he may, on an affidavit made by himself, or by any other person who can swear positively to the debt or cause of action, verifying the cause of action, and stating that in his belief there is no defence to the action, serve the defendant with a notice of motion to shew cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs. A copy of the affidavit shall accompany the notice of motion. The Court or a Judge may thereupon, unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend the action, make an order empowering the plaintiff to sign judgment accordingly. (Comp. R. Sup. C., Order 14, R. 1; R. Sup. C. May, 1877, R. 3.)

81  
Procedure.

2. The application by the plaintiff for leave to enter judgment under the last preceding Rule shall be made on notice returnable not less than 2 clear days after service. (Comp. R. Sup. C., Order 14, R. 2.)

82  
Shewing  
cause.

3. The defendant may shew cause against such application by offering to bring into Court the sum indorsed on the writ, or by affidavit. In such affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part, of the plaintiff's claim. And the Judge may, if he think fit, order the defendant to attend and be examined upon oath; or to produce any books or documents or copies of or extracts therefrom. (*Ib.* R. 3.)

83  
Defence as to  
part.

4. In any case if it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted to be due, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of any amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to

the residue of the plaintiff's claim. (*Ib.* R. 4.)

5. If it appears to the Judge that any defendant has a good defence to the action, or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former. (*Ib.* R. 5.)

84

Where several defendants.

6. Leave to defend may be given unconditionally, or subject to such terms as to giving security, or otherwise, as the Court or a Judge may think fit. (*Ib.*, R. 6.)

85

Leave to defend may be absolute or conditional.

## ORDER XI.

### APPLICATION FOR ACCOUNT, &C., WHERE WRIT INDORSED UNDER ORDER III, RULE 6.

1. In default of appearance to a writ indorsed under Order 3, Rule 6, and after appearance in a case in which the preceding Orders do not entitle the plaintiff to a judgment or order on præcipe or otherwise, then unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made. (Comp. R. Sup. C., Order 15, R. 1; G. O. Chy. No. 467 *et seq.*; R. S. O., c. 50, ss. 189-197; Imp. Act 15 & 16 V. c. 86, ss. 45, 47; Order 9, R. 10 Ante.)

86

Action for account.

2. An application for such order as mentioned in the last preceding Rule shall be made on notice, and be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired. (R. Sup. C., *Ib.* R. 2.)

87

Application to be on notice.

3. But the preceding 2 rules are not to prevent orders for the administration of the estate real or personal of a deceased person, or for the partition or sale of an estate from being obtained on motion without any previous notice or other preliminary proceeding, and in the manner provided for by the General Orders of the Court of Chancery in that behalf. (*See* G. O. Chy. Nos. 467 *et seq.*; 638 *et seq.*)

88

Orders for administration, partition or sale.

## ORDER XII.

(*See* R. S. O., c. 50, ss. 73-83.)

### PARTIES.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And, without any amendment, judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the

89

Who may be joined as plaintiffs.

- action shall otherwise direct. (R. Sup. C., Order 16, R. 1 ; R. S. O., c. 49, s. 5.)
- 90**  
Substitution and addition of plaintiffs.
2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a Judge, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person or persons to be substituted or added as plaintiff or plaintiffs, upon such terms as may seem just. (R. Sup. C., Order 16, R. 2 ; Comp. R. S. O., c. 49, s. 5.)
- 91**  
Who may be joined as defendants.
3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And, without any amendment, judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities. (*See* R. Sup. C., Order 16, R. 3.)
- 92**  
Where defendant not interested in all the relief prayed.
4. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein ; but the Court or a Judge may make such order as may appear just, to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest. (*Ib.*, R. 4.)
- 93**  
All or any parties liable on one contract may be joined.
5. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes. (*Ib.*, R. 5 ; *See* G. O. Chy., No. 62.)
- 94**  
Several defendants in cases of doubt.
6. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action. (R. Sup. C., Order 16, R. 6.)
- 95**  
Trustees, executors and administrators.
7. Trustees, executors, and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action ; but the Court or a Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to, or in lieu of, the previously existing parties thereto. (*Ib.*, R. 7 ; *See* G. O. Chy., Nos. 58, 61 ; Imp. Act 15 and 16 Vic., c. 86, s. 42.)
- 96**  
Infants.
8. Infants may sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of the Act ; and may, in like manner, defend any action by their guardians appointed for that purpose, or by the official guardian, as the case may be.
- 97**  
Married women.
9. Married women may sue or defend without their husbands and without next friends, in all cases relating to their separate estate, or to their separate engagements, contracts or torts ; and also in suits for alimony ; and in other cases by the leave of a Court or a Judge, on giving (in such other cases) such security (if any) for costs as the Court or a Judge may

require. (Comp. R. Sup. C., Order 16, R. 8; R. S. O., c. 125, "Married Woman's Property Act.")

(a) In cases not thus provided for, married women may sue as plaintiffs by their next friends in manner practised in the Court of Chancery before the passing of the Act.

10. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the Court to defend, in such action, on behalf of, or for the benefit of, all parties so interested. (R. Sup. C., Order 16, R. 9; G. O. Chy., Nos. 58-61.)

11. In any case in which the right of an heir-at-law or of the next of kin, or of a class shall depend upon the construction which the Court may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the Court shall consider that in order to save expense or for some other reason it will be convenient to have the question or questions of construction determined before such heir-at-law, next of kin or class, shall have been ascertained by means of inquiry or otherwise, the Court may appoint some one or more person or persons to represent such heir-at-law, next of kin or class, and the judgment of the Court in the presence of such person or persons shall be binding upon the party or parties or class so represented. (R. Sup. C., June, 1876, R. 7.)

12. Any two or more persons claiming, or being liable, as co-partners, may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a Judge for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct. (R. Sup. C., Order 16, R. 10.)

13. Any person carrying on business in the name of a firm, apparently consisting of more than one person, may be sued in the name of such firm. (R. Sup. C., June 1876, R. 8.)

14. Subject to the Act and these Rules, the provisions as to parties, contained in Orders 58, 59, 60 and 61 of the General Orders of the Court of Chancery, shall be in force as to actions in the High Court of Justice. (Comp. R. Sup. C., Order 16, R. 11; Imp. Act, 15 and 16 V., c. 86, s. 42; G. O., Chy., No. 68.)

15. No action shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. (See R. Sup. C., Order 16, R. 13; G. O. Chy., No. 53.)

(a) The Court or Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out, and that the name of any party, whether plaintiff or defendant, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added.

(b) No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto.

(c) All parties whose names are so added as defendants shall be served with a notice in manner hereinafter mentioned, or

98

Where parties are numerous.

99

Persons appointed to represent a class.

100

Partners.

101

Person trading under firm name.

102

Rules of Court of Chancery as to parties.

103

Misjoinder.

in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice. (Comp. R. Sup. C., Order 16, R. 13; R. S. O., c. 50, s. 73, *et seq.*)

104  
How applica-  
tion is to be  
made.

16. Any application to add, or strike out, or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion, or at the trial of the action in a summary manner. (R. Sup. C., Order 16, R. 14.)

105  
Amended writ  
where new  
defendant  
added.

17. Where a defendant is added, unless otherwise ordered by the Court or Judge, the plaintiff shall sue out an amended writ of summons, and serve the new defendant with such writ, or notice in lieu of service thereof, in the same manner as original defendants are served. (*Ib.*, R. 15.)

106  
Amended  
statement of  
claim.

18. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the Court or Judge, be amended in such manner as the making such new defendant a party shall render desirable; and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice, or afterwards within 4 days after his appearance. (*Ib.*, R. 16.)

107  
Contribution  
or indemnity  
between de-  
fendants and  
other persons.

19. Where a defendant is, or claims to be, entitled to contribution or indemnity, or any other remedy or relief, over against any other person, or where from any other cause it appears to the Court or a Judge that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff, defendant and any other person, or between any or either of them, the Court or a Judge may on notice being given to such last-mentioned person, make such order as may be proper for having the question so determined. (*Ib.* R. 17; *See* s. 18, sub-s. 4, of Act *ante.*)

108  
Notice to per-  
sons not al-  
ready parties.

20. Where a defendant is entitled to contribution, indemnity, or other remedy or relief over against any person not a party to the action, he may serve a notice to that effect;

(a) A copy of such notice shall be filed with the proper officer, and served on such person, according to the rules relating to the service of writs of summons;

(b) The notice shall state the nature and grounds of the claim, and shall unless otherwise ordered by the Court or a Judge, be served within the time limited for delivering his statement of defence;

(c) Such notice may be in the form or to the effect of the Form No. 18 in Appendix (B) hereto with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action. (Comp. R. Sup. C., Order 16, R. 18.)

109  
Court may  
direct notice  
to be given.

21. Where under Rule 19 of this order it is made to appear to the Court or a Judge, at any time before or at the trial, that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the Court or Judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper; and if made at the trial the Judge may postpone such trial as he may think fit. (*Ib.*, R. 19.)

110  
Appearance  
by third party.

22. If a person not a party to the action, who is served as

mentioned in Rule 20, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within 8 days from the service of the notice; in default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise; provided always, that a person so served and failing to appear within the said period of 8 days, may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit. (*Ib.*, R. 20.)

23. If a person not a party to the action served under these Rules appears pursuant to the notice, the party giving the notice may apply to the Court or a Judge for directions as to the mode of having the question in the action determined;

(a) The Court or Judge, upon the hearing of such application, may, if it shall appear desirable so to do, give to the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions, as to the Court or Judge shall appear proper for having the question most conveniently determined, and with respect to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question, and as to the costs of the proceedings. (*See Ib.*, R. 21; *Yorkshire Waggon Coy. vs. Newport and Abercarne Coal Coy.*, 5 Q. B. D. 268.)

24. A plaintiff is not to be unnecessarily delayed in recovering his claim by reason of questions between defendants in which the plaintiff is not concerned; and the Court or Judge is to give such direction as may be necessary to prevent such delay of the plaintiff, where this can be done, on terms or otherwise, without injustice to the defendants.

25. Where a person not already a party to a suit is to be served with notice of a judgment or order for the purpose of binding him as if he had been originally a party, and such person is an infant, or person of unsound mind not so found by inquisition or judicial declaration, the notice shall be served in the same manner as a writ of summons. (*See R. Sup. C.*, April, 1880, R. 7.)

26. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Judge, be entitled to appear either in Court or in Chambers on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability. The Judge may direct any other party to the cause to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as he shall think fit. (*R. Sup. C.*, April, 1880, R. 8.)

### ORDER XIII.

#### JOINDER OF CAUSES OF ACTION.

1. Subject to the following Rules, the plaintiff may unite in the same action and in the same statement of claim several causes of action; but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried

111

Direction as to mode of determining questions in action.

112

Plaintiff not to be delayed by questions between defendants.

113

Service on infant or person of unsound mind.

114

Parties to administration proceeding.

115

What causes of action may be joined.

- or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof. (R. Sup. C., Order 17, R. 1; R. S. O., c. 50, ss. 84-86; Eng. C. L. P. Act of 1852, s. 41.)
- 116  
Action for recovery of land. 2. No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are or is held; and except claims in actions on mortgages, for the recovery of the mortgage money and for foreclosure or sale. (R. Sup. C., Order 17, R. 2; R. S. O., c. 50, s. 84.)
- 117  
Claims by assignee in insolvency. 3. Claims by an assignee in insolvency as such shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity. (Comp. R. Sup. C., Order 17, R. 3.)
- 118  
Claims by or against husband and wife. 4. Claims by or against husband and wife may be joined with claims by or against either of them separately. (*Ib.*, R. 4; R. S. O., c. 50, s. 86; Eng. C. L. P. Act of 1852, s. 40.)
- 119  
Claims by or against executor. 5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator. (R. Sup. C., Order 17 R. 5.)
- 120  
Joint and several claims. 6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. (*Ib.*, R. 6.)
- 121  
Power to order separate trial. 7. The last 3 preceding Rules shall be subject to Rule 1 of this Order, and to the Rules hereinafter contained. (*Ib.*, R. 7.)
- 122  
Application to strike out. 8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding. (*Ib.* R. 8; R. S. O., c. 50, s. 85; Eng. C. L. P. Act of 1852, s. 41.)
- 123  
Order to strike out pleadings. 9. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of in one action, the Court or a Judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons and the indorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just (R. Sup. C., Order 17, R. 9.)

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#### ORDER XIV.

##### ACTIONS BY AND AGAINST LUNATICS AND PERSONS OF UNSOUND MIND.

124  
Insane persons.

In all cases in which lunatics and persons of unsound mind, not so found by inquisition or judicial declaration, might respectively before the passing of the Act have sued as plaintiffs, or

would have been liable to be sued as defendants, in any action or suit, they may respectively sue as plaintiffs in any action by their committees or next friends in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose. (R. Sup. C., Order 18 ; R. S. O. c. 40, s. 65, c. 220, ss. 49, 50.)

## ORDER XV.

### PLEADING GENERALLY.

1. The following Rules of pleading shall be substituted for those heretofore used in the Court of Chancery and in the Courts of Common Law. (Comp. R. Sup. C., Order 19, R. 1.)

125  
Old rules  
abolished.

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of claim, the plaintiff shall within such time and in such manner as hereinafter prescribed, deliver to the defendant after his appearance a statement of his claim and of the relief or remedy to which he claims to be entitled ; or a notice in lieu of such statement as provided by Order 17 of these Rules. (*Ib.*, R. 2.)

126  
Statement of  
claim and de-  
fence.

(a) The defendant shall, within such time and in such manner as hereinafter prescribed, deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any). (*Ib.*, R. 2.)

(b) The plaintiff may, in like manner, deliver a statement of his reply (if any) to such defence, set-off, or counter-claim. (*Ib.*, R. 2.)

(c) Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same. (*Ib.*, R. 2 ; *See* G. O. Chy., No. 71.)

(d) The taxing officer shall have the like duty where the Court has not made such order. (*See* Order 50, R. 8, *post.*)

3. A defendant in an action may set-off, or set up by way of counter-claim, against the claims of the plaintiff, any right or claim whether such set-off or counter-claim sound in damages or not. (R. Sup. C., Order 19, R. 3.)

127  
Set-off and  
counter-claim

(a) Such set-off or counter-claim shall have the same effect as a statement of claim in a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. (*Ib.* R. 3.)

(b) But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. (*Ib.*, R. 3.)

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved ; such statement shall be divided into paragraphs, numbered consecutively ; and each paragraph shall contain, as nearly as may

128  
Form of  
pleadings.

- be, a separate allegation; dates, sums and numbers shall be expressed in figures and not in words; signature of counsel shall not be necessary; forms similar to those in Appendix (D) hereto may be used. (*Ib.*, R. 4.)
- 129  
Copies of pleadings.
5. Every pleading may be either printed or written, or partly printed and partly written, but no more than 4 copies of any pleading or other document are to be allowed to any party in a cause or matter, exclusive of the draft, but inclusive of all other copies that may be required, or made, in the progress of the cause. (*See* R. Sup. C., Order 19, R. 5; G. O. Chy., Nos. 66, 403.)
- 130  
Printing pleadings.
6. If more than 3 copies, exclusive of the draft, are required of any pleading or other document, the party may have the pleading or document printed for the purposes of the cause or matter, and in that case he shall in lieu of all charges for copies be allowed 30 cents per folio of the pleading or document, and his reasonable disbursements of procuring the same to be printed. (*See* R. Sup. C., Order 19, R. 5; G. O. Chy., No. 404.)
- 131  
Delivery of pleadings.
7. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor; but if no appearance has been entered for any party, then such pleading or document shall be delivered by being posted up in the office from which the writ of summons was issued. (Comp. R. Sup. C., Order 19, R. 6.)
- 132  
How pleadings delivered should be marked.
8. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is filed, and with the reference to the Division to which the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent (if any) of the party filing the same, or the name and address of the party filing the same if he does not act by a solicitor. (Comp. *Ib.*, R. 7.)
- 133  
Relief claimed to be stated specifically.
9. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his statement of defence. If the plaintiff's claim be for discovery only, the statement of claim shall shew it. (*Ib.* R. 8.)
- 134  
Distinct claims or defences.
10. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts. (*Ib.*, R. 9.)
- 135  
Effect of document may be stated.
11. Where the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material. (R. Sup. C., Order 19, R. 24.)
- 136  
Allegation of malice, etc.
12. Where it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact, without setting out the circumstances from which the same is to be inferred. (*Ib.*, R. 25.)

13. Where it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice is material. (*Ib.*, R. 26.) 137  
Allegation of notice.
14. Where any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail; and if in such a case, the person so pleading desires to rely in the alternative upon more contracts or relations than one, as to be implied from such circumstances, he may state the same in the alternative. (*Ib.*, R. 27.) 138  
Implied contract.
15. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied. 139  
Facts presumed need not be stated.  
[*E.g.*—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.] (*Ib.*, R. 28.)
16. If either party wishes to deny the right of any other party to claim as executor, or as trustee, or as assignee in insolvency, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically, or the same will be taken to be admitted. (*See Ib.*, R. 11.) 140  
Denial of representative capacity.
17. Where a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise. (*Comp. Ib.*, R. 23.) 141  
Bare denial of contract only denial of the making.
18. No plea or defence shall be pleaded in abatement. (*Ib.*, R. 13.) 142  
No Plea in abatement.
19. No new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment is hereafter to be introduced by amendment of the statement of claim. (*See Ib.*, R. 14.) 143  
No new assignment.
20. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession. And he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned. (*Ib.*, R. 15; *Comp. R. S. O.*, c. 40, s. 87, c. 51, s. 14.) 144  
Defence to action for recovery of land.
21. Nothing in these Rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence without the leave of the Court or a Judge. (*R. Sup. C.*, Order 19, R. 16; *Reg. Gen. T. T.* 1856, No. 21, Ont.) 145  
Plea of not guilty by statute.
22. Admissions are, in all cases where it is practicable, to be by reference to the numbers of the paragraphs in the pleading to which they relate, with such qualifications as may be necessary or proper for protecting the interests of the party making 146  
Manner of making admissions.

such admissions: thus—"the defendant admits the allegations made in the first, second and third paragraphs of the plaintiff's claim." (*See G. O. Chy., Nos. 125, 151.*)

117  
What facts  
must be  
pleaded.

23. Each party in any pleading, not being a petition or a writ of summons, must allege all such facts not appearing in the previous pleading (if any), as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not so raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as (for instance) fraud, or that any claim has been barred by the Statute of Limitations, or has been released. (*R. Sup. C., Order 19, R. 18.*)

149  
Silence of  
pleading no  
admission.

24. Save as above otherwise provided, the silence of a pleading as to any allegation contained in the previous pleading of the opposite party is not to be construed into an implied admission of the truth of such allegation; and any allegation introduced for the purpose of preventing such implied admission, and not for the purpose of making intelligible the grounds of defence, is to be considered impertinent. (*See Ib., R. 21; G. O. Chy., No. 153; R. S. O. c. 50, s. 117.*)

149  
Inconsistent  
pleadings.

25. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. (*Ib., R. 19.*)

150  
Delivery in-  
cludes filing.

26. Delivering a statement of claim or defence or other pleading or proceeding, when mentioned or referred to in these Orders, includes filing, where, by the practice of the Courts heretofore or under these Orders, such statement, pleading or proceeding ought to be filed.

## ORDER XVI.

### PLEADING MATTERS ARISING PENDING THE ACTION.

151  
Before deliv-  
ery of defence.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. (*Comp. R. Sup. C., Order 20, R. 1.*)

152  
Before deliv-  
ery of defence  
to counter-  
claim.

2. If, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in reply, or be introduced by amendment into the statement of claim, within 3 weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge. (*Comp. R. Sup. C., Order 20, R. 12; Order 24, R. 1; R. S. O., c. 50, s. 94; Eng. C. L. P. Act of 1852, s. 53; G. O. Chy., Nos. 149-155.*)

153  
After delivery  
of defence.

3. Where any ground of defence arises after the defendant has delivered his statement of defence, he may within 8 days after such ground of defence has arisen, deliver a further defence setting forth the same, or, introduce the same by amendment into his statement of defence. (*Comp. R. Sup. C., Order 20, R. 2; R. S. O., c. 50, ss. 106, 107; Reg. Gen. T. T. 1856, Nos. 22, 23, Ont.; Eng. C. L. P. Act of 1852, ss. 68-69; See post, Order 52, R. 8, and Order 55.*)

154  
After delivery  
of reply.

4. Where a ground of defence to any set-off or counter-claim arises after the expiration of 3 weeks from the time of

delivering the defence or the last of the defences, the plaintiff within 8 days after such ground of defence has arisen, may deliver a further reply setting forth the same, or may introduce such new ground of defence into his statement of claim by amendment. (Comp. *Ib.*, R. 2.)

5. In any such case the amendment of the pleading filed may be made without an order, on filing a *præcipe* and an affidavit that the matter of the amendment arose within 8 days, next before the day of the making of such amendment. (See R. S. O., c. 50, s. 107.)

155

Amendment  
on *præcipe*.

6. In cases not provided for by the preceding rules, the leave of the Court or a Judge to amend the statement of claim or defence, or to deliver a further defence or reply, is to be obtained on notice supported by affidavit. (R. Sup. C., Order 27, R. 5, 6.)

156

Amendment  
by leave.

7. Where any defendant, in his statement of defence, whether by way of amendment or otherwise, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence; which confession may be in the Form No. 17 in Appendix (B) hereto, with such variations as circumstances may require; and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order. (Comp. R. Sup. C., Order 20, R. 3.)

157

Plaintiff may  
deliver con-  
fession of  
defence.

## ORDER XVII.

### STATEMENT OF CLAIM.

1. The delivery of statements of claim shall be regulated as follows:—

(a) If the defendant shall not state that he does not require the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within 3 months from the time of the defendant's entering his appearance. (Comp. R. Sup. C., Order 21, R. 1 (a); Order 8, R. 6 (a) *ante*.; Order 15, R. 2, *ante*.; R. S. O., c. 50, s. 93.)

158

Time within  
which to be  
delivered.

(b) If the defendant shall state that he does not require the delivery of a statement of claim, the plaintiff shall file a copy of the summons with all indorsements thereon within the same time.

(c) The plaintiff may, if he think fit, deliver a statement of claim, with the writ of summons, or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than 3 months after the appearance has been entered, unless otherwise ordered by the Court or a Judge. (Comp. R. Sup. C., Order 21, R. 1 (b).)

(d) Where a plaintiff delivers a statement of claim without being required to do so, the Court or a Judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper. (*Ib.*, R. 1 (c).)

(e) The taxing officer shall have the same duty if no order is made by the Court or a Judge. (See R. Sup. C., Aug. 12, 1875, R. 18.)

**159**  
Notice in lieu  
of statement.

2. Where the writ is specially indorsed and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to file a copy of the writ, with a copy of the special indorsement thereon, if not filed already, and deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a Judge shall order him to deliver a further statement.

(a) Such notice may be either written or printed, or partly written and partly printed, and may be in the Form No. 16 in Appendix (B) hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim.

(b) When the plaintiff is ordered to deliver such further statement it shall be delivered within such time as by such order shall be directed; and if no time be so limited then within the time prescribed by Rule 1 of this Order. (R. Sup. C., Order 21, R. 4. See Order 3, R. 5 *ante*.)

## ORDER XVIII.

### DEFENCE.

**160**  
When defence  
must be  
delivered.

1 Where a statement of claim is delivered to a defendant he shall deliver his defence within 8 days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge. (Comp. R. Sup. C., Order 22, R. 1; R. S. O., c. 50, ss. 100, 101; c. 51, s. 3; G. O. Chy., Nos. 88, 89, 408 620; Eng. C. L. P. Act of 1852, s. 63.)

**161**  
Where no  
statement of  
claim.

2. A defendant, who has appeared in an action and stated that he does not require the delivery of a statement of claim and to whom a statement of claim is not delivered, may deliver a defence at any time within 8 days after his appearance, unless such time is extended by the Court or a Judge. (Comp. R. Sup. C., Order 22, R. 2. See Order 15, R. 2 *ante*; Order 25 *post*.)

**162**  
Where leave to  
defend given.

3. Where leave has been given to a defendant to defend under Order 10, Rule 1, he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within 8 days after the order. (*Ib.*, R. 3.)

**163**  
Costs of un-  
necessary  
denials.

4. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by either or any party ought to have been admitted, the Court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. (Comp. *Ib.*, R. 4; G. O. Chy., Nos. 124, 125, 180, 234.)

**164**  
Where coun-  
ter-claim  
affects third  
persons.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. (Comp. R. Sup. C., Order 22, R. 5.)

**165**  
Service of  
defence on  
third party.

6. Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such

service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 9 in Appendix (B) hereto, or to the like effect. (*Ib.*, R. 6.)

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action. (*Ib.*, R. 7.)

166

Appearance  
by third party

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim. (*Ib.*, R. 8.)

167

Reply by  
third party.

9. Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff, or any other person named in manner aforesaid as party to such counter-claim, contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time within 3 weeks from the delivery of such statement of defence, apply to the Court or a Judge for an order that such counter-claim may be excluded; and the Court or a Judge may, on the hearing of such application, make such order as shall be just. (*Comp. Ib.*, R. 9.)

168

Striking out  
counter-claim.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. (*Ib.*, R. 10.)

169

Judgment for  
balance of  
counter-claim

## ORDER XIX.

### DISCONTINUANCE.

1. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, filed and served, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint; and thereupon he shall pay the defendant's costs of the action, or if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn.

170

Discontinu-  
ance.

Costs.

(a) Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.

(b) Save as in this Order otherwise provided, it shall not be competent for the plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before, or at or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out.

Withdrawal of  
record.

(c) The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but

Striking out  
defence.

it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

(Comp. R. Sup. C., Order 23, R. 1; Reg. Gen. T. T., 1856, No. 24, Ont.)

**171**  
Withdrawal of  
record by  
consent.

2. Where a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties. (R. Sup. C., Dec., 1875, R. 9.)

**172**  
Costs on dis-  
continuance.

3. A defendant may sign judgment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued. (R. Sup. C., June, 1876, R. 10; See Reg. Gen., T. T., 1856, No. 24, Ont.)

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## ORDER XX.

### REPLY AND SUBSEQUENT PLEADINGS.

**173**  
Delivery  
of reply.

1. A plaintiff shall deliver his reply, if any, within 3 weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge. (R. Sup. C., Order 24, R. 1.)

**174**  
Leave for  
subsequent  
pleadings.

2. No pleading, subsequent to reply, other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit. (*Ib.*, R. 2.)

**175**  
Time for  
delivery.

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within 4 days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge. (*Ib.*, R. 3.)

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## ORDER XXI.

### CLOSE OF PLEADINGS.

**176**  
When plead-  
ings closed.

As soon as either party has joined issue upon any pleading of the opposite party simply, without adding any further or other pleading thereto, or as soon as the time for amending the pleadings under these Rules or under any order made in the action or for delivering a reply or subsequent pleading or demurrer, has expired, the pleadings as between such parties shall be deemed to be closed without any joinder of issue being pleaded by any or either party. (Comp. R. Sup. C., Order 25; Order 29, R. 12; R. S. O., c. 50, s. 117.)

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## ORDER XXII.

### ISSUES.

**177**  
Settlement of  
issues.

Where in any action it appears to a Judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the Judge. (R. Sup. C., Order 26.)

## ORDER XXIII.

## AMENDMENT OF PLEADINGS.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply; or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action. All such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties. (R. Sup. C., Order 27, R. 1. Comp. R. S. O., c. 49, ss. 5, 8; c. 50, ss. 120, 270.)

**178**  
Amendment  
with leave.

2. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of 4 weeks from the appearance of the defendant who shall have last appeared. (Comp. R. Sup. C., Order 27, R. 2; Order 24, R. 1; Order 25; Eng. C. L. P. Act of 1852, s. 222; *Ib.*, 1856, s. 96; *Ib.*, 1860, s. 36.)

**179**  
Amendment  
by plaintiff  
without leave.

3. A defendant who has set up in his defence any set-off or counter-claim, may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or in case there be no reply, then within 28 days from the filing of his defence. (Comp. R. Sup. C., Order 27, R. 3.)

**180**  
Amendment  
by defendant  
without leave.

4. Where any party has amended his pleadings under either of the last 2 preceding Rules, the opposite party may, within 8 days after the delivery to him of the amended pleading, apply to the Court or a Judge, to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it, subject to such terms as to costs or otherwise as may seem just. (*Ib.*, R. 4.)

**181**  
Disallowance  
of amendment.

5. Where any party has amended his pleading under Rule 2 or 3 of this Order, the other party may without leave amend his former pleading within 4 days after the delivery of the pleading so amended under such Rule: or he may apply to the Court or a Judge for leave to amend his former pleading within such further time and upon such terms as may seem just. (Comp. *Ib.*, R. 5; Order 24, R. 3; G. O. Chy., Nos. 153-155.)

**182**  
Leave to plead  
or amend after  
amendment.

6. Either party may amend his pleading at any time without order on filing the written consent of the opposite party or his solicitor.

**183**  
Amendment  
by consent.

7. In all cases not provided for by the preceding Rules numbered from 2 to 6, of this Order, application for leave to amend any pleading may be made by either party to the Court or a Judge in Chambers, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise, as may seem just. (R. Sup. C., Order 27, R. 6.)

**184**  
Application  
for leave to  
amend.

8. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within 14 days from the date of the

**185**  
Time limited  
for amend-  
ment.

order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such 14 days, as the case may be, become, *ipso facto*, void, unless the time is extended by the Court or a Judge. (Comp. *Ib.*, R. 7; G. O. Chy. No. 83.)

**186**  
How alterations to be made.

9. A pleading may be amended by written alterations in the copies filed and served and by additions on paper to be interleaved therewith if necessary; unless the amendments require the insertion of more than 200 words in any one place, or are so numerous or of such a nature that the making them in the copies filed and served would render the same difficult or inconvenient to read; in either of which cases the amendment must be made by delivering a print or fresh copy of the pleading as amended. (Comp. R. Sup. C., Order 27, R. 8.)

**187**  
Marking of amended pleadings.

10. Where any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz: "Amended day of . ." (*Ib.*, R. 9.)

**188**  
Delivery of amended pleadings.

11. Where a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same. (*Ib.*, R. 10.)

## ORDER XXIV.

### DEMURRER.

**189**  
Demurrer when allowed.

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not shew any cause of action or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply or as the case may be, to which effect can be given by the Court as against the party demurring. (*See* R. Sup. C., Order 28, R. 1.)

**190**  
Form of demurrer.

2. A demurrer shall state specifically whether it is to the whole or to a part, and if to part only, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form No. 73 in Appendix (D) hereto. If no ground, or only a frivolous ground of demurrer is stated, the Court or a Judge may set aside such demurrer, with costs. (*Ib.*, R. 2; R. S. O., c. 50, s. 128.)

**191**  
Delivery of demurrer.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading in the action. (R. Sup. C., Order 20, R. 3.)

**192**  
Demurrer and defence to be combined.

4. A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party, he shall combine such demurrer and other pleading. (*Ib.*, R. 4.)

**193**  
Plea and demurrer to same pleading without leave.

5. Either party may without leave plead and demur to the same pleading at the same time by filing an affidavit by such party distinctly denying some one or more material statement or statements in such pleading; or stating that the several mat-

ters sought to be pleaded by way of confession and avoidance are respectively true in substance and in fact; and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law. The affidavit is to be annexed to and filed with the plea and demurrer, and a copy of the affidavit is to be served with the plea and demurrer. (*See R. S. O., c. 50, s. 118.*)

194

Leave to demur and plead to the same matter.

6. If the party demurring desires to be at liberty to plead as well as to demur to the matter demurred to without filing such affidavit, he may, before demurring, apply to the Court or a Judge for an order giving him leave to so plead and demur, such application being supported by such affidavit as now required in the Superior Courts of Law; and the Court or Judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, and may direct which issue shall be first disposed of; or may make such other order and upon such terms as may be just. (*See R. Sup. C., Order 28, R. 5; R. S. O., c. 50, s. 118; Reg. Gen. of May 21, 1877, 41 Q. B. U. C., 565.*)

195

Entry for argument.

7. Where a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice thereof to the other party.

(a) If the demurrer shall not be entered and notice thereof given within 10 days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient, for the same purposes, and with the same result as to costs, as if it had been allowed on argument. (*R. Sup. C., Order 28, R. 6; G. O. Chy., Nos. 121, 146, 418.*)

Effect of no entering.

196

No amendment pending demurrer.

8. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended unless by order of the Court or a Judge; and no such order shall be made except on payment of the costs of the demurrer. (*Comp. R. Sup. C., Order 28, R. 7; Reg. Gen. T. T., 1856, Nos. 14, 15, Ont.*)

197

Costs of successful demurrer.

9. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the Court otherwise order, pay to the demurring party the costs of the demurrer. (*R. Sup. C., Order 28, R. 8.*)

198

Costs of action on successful demurrer to plaintiff's whole claim.

10. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order. (*Ib., R. 9.*)

199

Effect of demurrer to part being allowed.

11. Where a demurrer to any pleading or part of a pleading is allowed in a case not falling within the last preceding Rule, then (subject to the power of the Court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded. (*Ib., R. 10.*)

200

Costs of unsuccessful demurrer.

12. Where a demurrer is overruled, the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct. (*Ib., R. 11.*)

201

Pleadings after demurrer is overruled.

13. Where a demurrer is overruled, the Court may make such order, and upon such terms as to the Court shall seem right, for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to. (*Ib., R. 12.*)

- 202**  
Form of entry  
or argument.} 14. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 85 in Appendix (E). (*Ib.*, R. 13.)

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ORDER XXV.

DEFAULT OF PLEADING.

- 203**  
Dismissal of  
action on  
plaintiff's  
default in  
claim for debt.} 1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of such time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order, on such terms, as to the Court or Judge shall seem just. (R. Sup. C., Order 29, R. 1.)
- 204**  
Judgment on  
defendant's  
default in  
claim for debt.} 2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs. (*Ib.*, R. 2; R. S. O., c. 50, s. 150.)
- 205**  
Where several  
defendants.} 3. Where in any such action as in the last preceding Rule mentioned there are several defendants, if one of them makes default as mentioned in the last preceding Rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants. (R. Sup. C., Order 29, R. 3.)
- 206**  
Interlocutory  
judgment on  
default in  
claim for  
damages.} 4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant, and the value of the goods, and the damages, or the damages only, as the case may be, shall be assessed as hitherto. But the Court or a Judge may order that the value and amount of damages, or either of them, shall be ascertained in any other way in which any question arising in an action may be tried. (Comp., *Ib.*, R. 4.)
- 207**  
Where several  
defendants.} 5. Where in any such action as in Rule 4 mentioned there are several defendants, if one of them makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others. And in such case, damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct. (*Ib.*, R. 5.)
- 208**  
Where debt  
and damages  
claimed.} 6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rule 4. (*Ib.*, R. 6.)
- 209**  
Default by  
defendant in  
action for  
land.} 7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter

a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs. (*Ib.*, R. 7.)

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, and some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in Rules 4 and 5. (*Ib.*, R. 8.)

210

Where claim for land and damages.

9. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court shall consider the plaintiff to be entitled to. (*Ib.*, R. 10; G. O. Chy. No. 270.)

211

Other actions.

10. Where, in any such action as mentioned in the last preceding Rule, there are several defendants, then, if one of such defendants makes such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants. (R. Sup. C., Order 29, R. 11.)

212

Where several defendants, and one makes default.

11. In any case in which issues arise other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties. (R. Sup. C., Order 29, R. 13.)

213

In case of issues between parties other than plaintiff and defendant.

12. Any judgment by default, whether under this Order or under any other of these Rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit. (*Ib.*, R. 14.)

214

Judgment by default may be set aside on terms.

## ORDER XXVI.

### PAYMENT INTO COURT IN SATISFACTION.

1. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the Court or a Judge at any later time, pay into Court a sum of money by way of satisfaction or amends. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein. (R. Sup. C., Order 30, R. 1; R. S. O., c. 50, ss. 108-110; Reg. Gen. T. T., 1856, Nos. 11-13, Ont.)

215

In what cases and at what time.

2. Such sum of money shall be paid as hitherto into the proper bank or to the proper officer, and the proper officer shall give a receipt for the same. If such payment be made before delivering his defence, the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 21, in

216

How paid.

Appendix (B) hereto. (Comp. R. Sup. C., Order 30, R. 2 ; R. S. O., c. 50, ss. 109, 121.)

217  
Payment out

3. Money paid into Court as aforesaid may, unless otherwise ordered by a Judge, be paid out to the plaintiff, or to his solicitor, on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officers of the Court, or one of the officers, whose duty it is to sign or countersign the cheque. (Comp. R. Sup. C., Order 30, R. 3 ; R. S. O., c. 50, s. 109 ; Reg. Gen. T. T., 1856, No. 11, Ont.)

218  
Acceptance in satisfaction.

4. The plaintiff, if payment into Court is made before delivering a defence, may within 4 days after receipt of notice of such payment, or if such payment is first stated in a defence delivered then, may, before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in ; in which case he shall give notice to the defendant in the Form No. 22 in Appendix (B) hereto, and shall be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and in case of non-payment within 48 hours, to sign judgment for his costs so taxed. (R. Sup. C., Order 30, R. 4 ; R. S. O., c. 50, s. 111.)

## ORDER XXVII.

### DISCOVERY AND INSPECTION.

219  
Right to have examination taken in shorthand.

1. In case of an examination before the trial, or otherwise than at the trial, of an action, if the examining party desires to have such examination taken in shorthand, he shall be entitled to have the examination taken before any examiner residing at the place of examination competent to take the evidence in shorthand, except where the Court or a Judge sees fit to order otherwise. (*See* 41 Vic., c. 8, s. 8, Ont.)

220  
Costs of preliminary examination.

2. The costs of every examination of parties or of officers of corporations before the trial, or otherwise than at the trial of an action, as authorized by the present practice of the respective Courts whose jurisdiction is vested in the High Court, shall be costs in the cause, but the Court or Judge in adjusting the costs of the action shall at the instance of any party inquire, or cause inquiry to be made, into the propriety of having made such examination ; and if it is the opinion of the Court or Judge, or the taxing master, as the case may be, that such examination has been had unreasonably, vexatiously, or at unnecessary length, the costs occasioned by the examination shall be borne in whole or in part by the party in fault. The taxing master may make such inquiry without any direction. (Comp. R. Sup. C., Order 31, R. 2 ; R. S. O., c. 50, ss. 156-167 ; Order 50, R. 7 *post.*)

221  
Order for production of documents.

3. It shall be lawful for the Court or a Judge at any time during the pendency of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any matter in question in such action or proceeding, as the Court or Judge shall think right ; and the Court may deal with such documents, when produced, in such manner as shall appear just. (*Ib.*, R. 11 ; *See* R. S. O., c. 50, ss. 169-175.)

- 222  
 ¶ 4. Any party may, after the close of the pleadings, (or when the application is on behalf of a plaintiff after the time for delivering the defence of any party to the action has expired,) obtain an order of course upon præcipe, directing the adverse party within 10 days after the service thereof, to make discovery on oath of the documents which are or have been in his possession or power, relating to any matters in question in the action. (R. Sup., G. O. Chy., No. 134.) And to produce and deposit the same with the proper officer for the usual purposes, and such party shall make discovery and produce and deposit the documents accordingly, without further notice. (Comp. C., Order 31, R. 12; R. S. O., c. 50, s. 169.)
- 223  
 ¶ 5. A third party who has been served by a defendant under Order 12, Rule 19, and has entered an appearance, shall, for all purposes of, and incident to the production of documents, and to examination, be as between him and such defendant in the same situation as a defendant, and the defendant serving him shall, for the same purposes, be in the same situation as a plaintiff; the time for taking out an order for production or for examination shall be after the party so served has delivered a reply, or where the application is on behalf of the defendant so serving such third party, the time shall be after the time for delivering the reply has expired.
- 224  
 ¶ 6. A person for whose immediate benefit a suit is prosecuted or defended is to be regarded as a party for the purpose of examination or production of documents.
- 225  
 ¶ 7. Where the party required to produce documents is a corporation aggregate, the affidavit shall be made by one of the officers of the corporation.
- 226  
 ¶ 8. The deponent shall be subject to cross-examination, and his affidavit shall have the same effect (as nearly as may be) as the affidavit of a party, unless where the Court or Judge sees reason for holding otherwise.
- 227  
 ¶ 9. Persons who have ceased to be officers of a corporation may be examined in the same manner as existing officers.
- 228  
 ¶ 10. The affidavit to be made by a party against whom an order for production has been made, shall specify which, if any, of the documents therein mentioned, he objects to produce, and said affidavit may be in the Form No. 33 in Appendix (E) hereto, with such variations as circumstances may require. (Comp. R. Sup. C., Order 31, R. 13; G. O. Chy., Nos. 135, 137, and sched. "G" thereto.)
- 229  
 ¶ 11. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, to give notice in writing to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice. (R. Sup. C., Order 31, R. 14.)
- 230  
 ¶ 12. No allowance is to be made for any order for production or any notice or inspection under any of the preceding Rules, unless it is shewn to the satisfaction of the taxing officer that there were good and sufficient reasons for taking such order,

Discovery before and after close of pleadings.

Position of a third party served by a defendant.

Person for whose benefit suit is conducted a party for certain purposes.

Affidavit or production by a corporation.

Cross-examination of deponent.

Examination of former officers of corporation.

Affidavit in answer.

Notice to produce documents referred to in pleading or affidavits.

Inspection of documents.

- giving such notice, or making such inspection. (R. Sup. C., Aug., 1875, R. 15.)
- 231  
Form of notice to produce.
13. Notice to any party to produce any documents referred to in his pleading or affidavits may be in the form No. 23 in Appendix (B) hereto, or to the same effect. (R. Sup. C., Order 31, R. 15; R. Sup. C., April, 1880, Form B, 10 a.)
- 232  
Notice to inspect.
14. The party to whom such notice is given shall, within 2 days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 5; or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within 4 days from the receipt of such notice; deliver to the party giving the same a notice stating a time within 3 days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce and on what ground. Such notice may be in the Form No. 25, in Appendix (B) hereto, with such variations as circumstances may require. (*Ib.*, R. 16; *See* R. S. O., c. 50, s. 170.)
- 233  
Order for inspection on default.
15. If the party served with notice under Rule 8 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge for an order for inspection. (R. Sup. C., Order 31, R. 17.)
- 234  
Application for order.
16. Every application for an order for inspection of documents shall be to a Judge. And, except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit shewing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. (*Ib.*, R. 18.)
- 235  
When inspection objected to.
17. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, may order that such issue or question be determined first, and reserve the question as to the discovery or inspection. (*Ib.*, R. 19.)
- 236  
Consequences of disobeying an order for discovery.
18. If any party fails to comply with any order for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution; and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and the party who obtained the order for discovery or inspection may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly. (Comp. *Ib.*, R. 20; G. O. Chy., No. 144.)
- 237  
Application for attachment.
19. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may shew in answer to the application that he has had no notice or knowledge of the order. (*Ib.*, R. 21.)
- 238  
Attachment of Solicitor.
20. A solicitor upon whom an order against any party for discovery or inspection is served under the last Rule, who

neglects without reasonable excuse to give notice thereof to his client, shall be liable to an attachment. (*Ib.*, R. 22; Comp. G. O. Chy., No. 136.)

21. Any party may, at the trial of an action or issue, use in evidence any part of the examination of the opposite parties; provided always, that in such case the Judge may look at the whole of the examination, and if he shall be of opinion that any other part is so connected with the part to be so used that the last mentioned part ought not to be used without such other part, he may direct such other part to be put in evidence. (Comp. R. Sup. C., Order 31, R. 23; G. O. Chy., No. 146.)

230  
Part of  
examination  
to be evidence.

## ORDER XXVIII.

### ADMISSIONS.

1. Each party is to admit such of the material allegations contained in the statement of claim or defence of the opposite party as are true; or he may give notice, by his own statement or otherwise, that he admits for the purposes of the action the truth of the case generally, or of any part of the case, stated or referred to in the statement of claim or defence of the opposite or any other party. (R. Sup. C., Order 32, R. 1; G. O. Chy., Nos. 124, 150, 180; Order 19, R. 4, *ante.*)

240  
Notice of ad-  
mission of  
statements of  
opponent.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense. (R. Sup. C., Order 32, R. 2; *See* R. S. O., c. 50, s. 171; G. O. Chy., No. 156.)

241  
Notice to ad-  
mit docu-  
ments.

3. A notice to admit documents may be in the Form No. 26, in Appendix (B) hereto. (R. Sup. C., Order 32, R. 3.)

242  
Form of  
notice.

4. The production of any written admissions purporting to be admissions in the action, and to be made in pursuance of any notice to admit documents or otherwise, and to be signed by the solicitor of the party by whom, or on whose behalf, they purport to be made, shall be sufficient *prima facie* evidence of such admissions. (Comp. *Ib.*, R. 4; G. O. Chy., No. 48; Reg. Gen. T. T., 1856, No. 159, Ont.)

243  
Proof of  
admissions.

## ORDER XXIX.

### INQUIRIES AND ACCOUNTS.

1. The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. (R. Sup. C., Order 33; *See* R. S. O. c. 50, ss. 189, 197.)

244  
May be direct  
ted at any  
stage.

245  
Provisions of  
reference to  
official or other  
referee.

2. Where a reference is made to any official or other referee under the Act, the referee shall have all the powers as to certifying and amending of a Judge of the High Court of Justice, and shall make his report of and concerning the matters ordered to be tried pursuant to the statute ;

(a) The referee may, if he think fit, examine the parties to the action, and their respective witnesses, upon oath or affirmation, and the parties shall produce before the referee all books, deeds, papers and writings in their or either of their custody or power relating to the matters ordered to be tried ;

(b) Neither the plaintiff nor the defendant shall bring or prosecute any action against the referee, or against each other, of or concerning the matters ordered to be tried, and if either party by affected delay or otherwise wilfully prevent the referee from making his report, he or they shall pay such costs to the other as the High Court, or any Judge thereof, may think reasonable and just ;

(c) In the event of the referee declining to act, or dying before he has made his report, the parties may, or if they cannot agree, one of the Judges of the High Court may, upon application by either party, appoint a new referee. (R. Sup. C., April, 1880, Forms H, 31 & 32.)

246  
Provisions of  
order of refer-  
ence to an  
arbitrator.

3. Where a reference is made by order to the award of an arbitrator, the arbitrator shall have all the powers as to certifying and amending of a judge of the High Court of Justice ; and shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award) on or before the time mentioned in the order, or on or before such further day as the arbitrator make from time to time appoint and signify in writing signed by him and indorsed on the order ;

(a) The arbitrator may (if he think fit) examine the said parties to the action, and their respective witnesses, upon oath or affirmation ; and the parties shall prove before the arbitrator all books, deeds, papers and writings in their or either of their custody or power relating to the matters in difference ;

(b) Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator or one another of or concerning the matters referred ; and if either party by affected delay or otherwise wilfully prevent the arbitrator from making an award, he or they shall pay such costs to the other as the arbitrator may think reasonable and just ;

(c) In the event of either of the parties disputing the validity of the award, or moving to set it aside, the Court or Judge shall have power to remit the matters referred or any or either of them to the reconsideration of the arbitrator ;

(d) In the event of the arbitrator declining to act or dying before he has made his award, the parties may, or if they cannot agree, one of the Judges of the High Court may, on application by either side, appoint a new arbitrator ;

(e) Unless restrained by any order of the High Court of Justice, or of any Judge thereof, the party or parties in whose favor the award shall be made shall be at liberty within 14 days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance

with the award, and for all costs that he or they may be entitled to under the order, and under the award, together with the costs of the judgment. (R. Sup. C., April, 1880, Form H, 22.)

4. An order under either of the preceding rules shall be read as if it contained the provisions set forth in the said rule, and shall not set forth the said provisions, but may contain any variation therefrom, and any other directions which the Court or Judge shall see fit to make.

247

Order to be read as containing above provisions.

## ORDER XXX.

### QUESTIONS OF LAW.

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. (Comp. R. Sup. C., Order 34, R. 1; R. S. O., c. 40, s. 85; c. 50, ss. 181, 185.)

248

Parties may concur in stating special case.

(a) The parties to a special case may, if they think fit, enter into an agreement in writing, that on the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the action; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be; and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal. (See R. Sup. C., April 1880, R. 9; R. S. O., c. 50, s. 182.)

(b) Every special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. (R. Sup. C., Order 34, R. 1.)

(c) Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. (R. Sup. C., Order 34, R. 1; Comp. R. S. O., c. 50, ss. 181, 185.)

2. If it appears to the Court or a Judge, either from the statement of claim or defence or reply, or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised either by special case or in such other manner as the Court or Judge may deem expedient; and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed. (R. Sup. C., Order 34, R. 2.)

249

Preliminary question of law.

3. Every special case shall be signed by the several parties or their solicitors, and shall be filed by the plaintiff. Copies for the use of the Judges shall be delivered by the plaintiff. (Comp. *Ib.*, R. 3.)

250

Preparing case.

- 251  
Persons under disability. 4. No special case in an action to which a married woman, infant, or person of unsound mind is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true. (*Ib.*, R. 4.)
- 252  
Entry for argument. 5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 85 in Appendix (E) hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument. (*Ib.*, R. 5.)
- 253  
Application of order. 6. This Order shall apply to every special case stated in an action or in any proceeding incidental to an action; whether under the said or any other Act. (*See* R. Sup. C., April, 1880, R. 10.)

## ORDER XXXI.

## TRIAL.

- 254  
Venue abolished. 1. There shall be no local venue for the trial of any action except an action of ejectment, but the plaintiff shall in his statement of claim name the county town in which he proposes that the action should be tried, and the action shall, unless a Judge otherwise orders, be tried in the place so named. Any order of a Judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court. (Comp. R. Sup. C., Order 36, R. 1.)
- 255  
Notice of trial. 2. After the close of the pleadings either party may give notice of trial for the next sitting of the Court which shall be not less than 10 days thereafter for the place so named or ordered; or if the plaintiff does not give such notice of trial, and if the pleadings were closed 6 weeks before the commencement of such sitting, the defendant, instead of giving notice of trial, may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just. (Comp. R. Sup. C., June 1876, R. 13; R. Sup. C., Order 36, R. 4; G. O. Chy., Nos. 161, 273.)
- 256  
Trial of different questions in different modes. 3. Subject to the provisions of the Act and of the preceding Rules, the Court or a Judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others. (Comp. R. Sup. C., Order 36, R. 6.)
- 257  
Trial by jury. 4. Every trial of any question or issue of fact by a jury shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges. (*Ib.*, R. 7.)
- 258  
Form of notice of trial. 5. Notice of trial shall state whether it is for the trial of the action or of issues therein; and the place and day for which it is to be entered for trial. It may be in the Form No. 14 in

Appendix (B), with such variations as circumstances may require. (Comp., *Ib.*, R. 8.)

6. 10 days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be 5 days' notice. (*Ib.*, R. 9; Comp. R. S. O., c. 50, s. 244; G. O. Chy., No. 163.) 250  
10 days' notice.  
Short notice  
5 days.
7. Notice of trial shall be given before entering the action for trial. (R. Sup. C., Order 36, R. 10.) 260  
Notice must be  
given before  
entry of cause.
8. After notice of trial is given either party may enter the action for trial. If both parties enter the action for trial, it shall be tried in the order of the plaintiff's entry. (R. Sup. C., Order 36, R. 15.) 261  
Entry for trial.
9. The party entering the action for trial shall at the same time deliver to the proper officer one copy of the whole of the pleadings in the action, for the use of the Judge at the trial, such copy to be certified as a true copy by the officer having charge of the pleadings filed. (Comp. *Ib.*, R. 17; R. Sup. C., Dec., 1875, R. 14.) 262  
Copy of plead  
ings.
10. Where the Judges consider that public convenience so requires, provision may be made for the trial at a separate time, or before another Judge, of the actions from the Chancery Division. 263  
Separate trials  
for actions in  
Chy. Division.
11. Actions in all the Divisions shall be entered not later than the third day next before the first day of the Assizes or sittings; but the Judge may permit any action to be entered after the time above limited, if upon facts disclosed on affidavit, or on the consent of both parties, he sees fit to do so. This Rule shall be construed to apply to County Courts. (*See* R. S. O., c. 50, s. 248.) 264  
Time of entry  
for trial.
12. Where the Deputy Clerk of the Crown and Deputy Registrar in any County are not the same person, all actions shall be so entered with the Deputy Clerk of the Crown, except in cases under Rules 11 and 14, but the Deputy Registrar shall attend the trial of actions brought in the Chancery Division, and shall be entitled to the same fee as if the cause had been set down with him for hearing. 265  
Actions with  
whom entered.
13. In case of provision being made for the trial at a separate time and place of actions brought in or assigned to the Chancery Division, the actions shall be entered for trial with the Registrar, or Deputy Registrar, as the case may be, according to the present practice of the Court of Chancery. 266  
When entry to  
be made with  
Registrar.
14. The party entering any action for trial shall indorse on the copy of the pleadings delivered as aforesaid, whether the matter for trial is an assessment of damages, or an undefended issue, or a defended issue; and the officer with whom the action is so entered shall make two lists, and enter each action in one of the said lists, in the order in which the actions are entered with him; and in the first list he shall enter all the assessments and undefended issues, and in the second list all defended issues, and the Judge at the trial may call on the actions in the first list at such time and times as he finds most convenient for disposing of the business. (*See* R. S. O., c. 50, s. 249.) 267  
Separate lists  
of defended  
and unde-  
fended issues
15. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him. (R. Sup. C., Order 36, R. 18.) 268  
Non-appear-  
ance of  
defendant.

- 269** Non-appear-  
ance of  
plaintiff.
16. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim he may prove such claim so far as the burden of proof lies upon him. (*Ib.*, R. 19.)
- 270** Setting aside  
judgment by  
default.
17. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a Judge upon such terms as may seem fit; such application may be made at the Assizes or sittings at which the trial took place, or in Toronto. (*Comp. Ib.*, R. 20.)
- 271** Evidence  
omitted by  
accident or  
mistake, how  
supplied.
18. Where, through accident or mistake or other cause, any party omits or fails to prove some fact material to his case, the Judge may proceed with the trial, subject to such fact being afterwards proved at such time, and subject to such terms and conditions as to costs and otherwise, as the Judge shall direct; and if the case is being tried by a jury, the Judge may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed; and if not so proved, judgment is to be entered for the opposite party, unless the Court or a Judge otherwise directs.
- 272** Adjournment  
of trial.
19. The Judge, if he think it expedient for the interest of justice, may postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit. (*Ib.*, R. 21; *See* R. S. O., c. 50, s. 259.)
- 273** Judge may  
direct entry of  
judgment; or  
reserve judg-  
ment.
20. Upon the trial of an action, the Judge may, at or after the trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration. (*Comp.* R. Sup. C., December, 1876, R. 3; R. S. O., c. 50, s. 262.)
- 274** By whom  
entries of  
findings to be  
made.
21. The Registrar, Clerk of Assize or other officer present at the trial shall enter all such findings of fact as the Judge may at the trial direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, such entry to be made in a book to be kept for the purpose, and also to be indorsed on the copy of the pleadings delivered under Rule 9 of this order. (*Comp.* R. Sup. C., Order 36, R. 23.)
- 275** Certificate of  
Judge or  
Officer.
22. The said indorsement, or the certificate of the said officer or the certificate of the Judge, shall be a sufficient authority to the proper officer for entering judgments to enter judgment accordingly. The certificate may be in the Form No. 178 in Appendix (H) hereto. (*Comp. Ib.*, R. 24.)
- 276** Trial before  
referee.
23. Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the Court or a Judge, hold the trial at, or adjourn it to, any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors if any, which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem* in a similar manner as in actions tried by a jury. (*Comp. Ib.*, R. 30.)
- 277** Proceedings at  
trial before  
referee.
24. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a Judge of the High Court, but not so as to make the tribunal of the referee a public court of justice. (*Ib.*, R. 31.)

25. Subject to any such order as last aforesaid, the referee shall have the same authority in the conduct of any reference or trial as a Judge of the High Court when presiding at any trial before him. (*Ib.*, R. 32.)

278  
Referee has authority of Judge.

26. Nothing in these Rules contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise. (*Ib.*, R. 33.)

279  
But not to commit to prison.

27. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct. (*Ib.*, R. 34 as amended by R. Sup. C., March 1879, R. 5; R. S. O., C. 50, s. 211.)

280  
Referee may submit questions to the Court.

28. The Court shall have power to require any explanations or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration, to the same or any other referee; or the Court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence, as the Court may direct. (*Ib.*)

281  
Court may remit case, or decide on evidence taken.

## ORDER XXXII.

### EVIDENCE GENERALLY.

1. In the absence of any agreement between the parties, and subject to these Rules, the witnesses at the trial of any action or at any assessment of damages, shall be examined *viva voce* and in open Court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined before an examiner; provided that where it appears to the Court or Judge that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit. (Comp. R. Sup. C., Order 37, R. 1; G. O. Chy., No. 176.)

282  
Evidence on trial of action.

2. Upon any motion, petition or summons, evidence may be given by affidavit; but any person having made an affidavit to be used, or which shall be used on any motion, petition or other proceeding before the court, shall be bound to attend for the purpose of being cross-examined, on being served with a writ of subpoena *ad testificandum*, but the court, nevertheless, may act on the evidence before it at the time, and may make such interim order, or otherwise, as appears necessary to meet the justice of the case. (Comp. R. Sup. C., Order 37, R. 2; S. O. Chy., No. 268.)

283  
Evidence on motion, or petition.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be

284  
Affidavits how framed.

285  
Depositions.

paid by the party filing the same. (*Ib.*, R. 3; G. O. Chy., No. 259.)

4. The Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein, on such terms, if any, as the Court or Judge may direct. (R. Sup. C., Order 37, R. 4; G. O. Chy., Nos. 266-269.)

### ORDER XXXIII.

#### COMMISSIONS TO EXAMINE WITNESSES.

(See rules of April, 1880, form H, 30.)

286  
Notice of  
motion.

1. Upon an application for a commission to take evidence, the applicant is in the notice of motion to state the name of the commissioner to whom he desires the commission to be issued; and where the opposite party desires to name another commissioner, he is, on the return of the motion, to give notice to the applicant of the name of any other commissioner.

287  
Commission  
to whom  
directed.

2. Upon the hearing of the motion the Court or Judge (or officer before whom the motion is made) may order the issue of the commission directed to the persons so named or to such other person or persons as may seem proper.

288  
Particulars to  
be stated in  
order.

3. The order or certificate for the issue of a commission is to state the name of the commissioner to whom it is to be directed and whether the examination of witnesses thereunder is to be taken upon oral questions or upon written interrogatories, and also whether or not notice of the execution thereof is to be given to the opposite party; and in case notice is to be so given, then the name and the address of the person on whom such notice is to be served are to be stated in the Order. (G. O. Chy., No. 221.)

289  
Mode of ex-  
amination.

4. The examination of witnesses under a commission is to be taken upon written interrogatories, and upon such oral questions as may be put by either party upon the subject matter of such interrogatories, or arising out of the answers thereto; or in case all parties consent, the examination may be had altogether upon oral questions. But all oral questions shall be reduced into writing and with the answers thereto returned with the commission.

290  
Examination  
on written  
interrogatories

5. Where the examination is to take place upon written interrogatories, the interrogatories in chief are to be delivered to the opposite party (unless otherwise ordered) at least 8 days before the issue of the commission; and the cross-interrogatories are to be delivered to the opposite party (unless otherwise ordered) within 4 days after the receipt of the interrogatories in chief; and in default of cross-interrogatories being so delivered, the opposite party may send the commission without cross-interrogatories.

291  
Examination  
*ex parte*.

6. An examination may be executed *ex parte*, unless the opposite party shall, upon the hearing of the application for the order or Master's certificate for the issue of the commission, require notice of the execution of the commission, and give the name and place of abode of some person resident within two miles of the place where the commission is to be executed, upon whom notice may be served.

7. Where notice of the execution of the commission is required to be served, 48 hours notice shall be sufficient; such notice is to be in writing, stating the time and place of the intended examination, and is to be addressed to the person named for that purpose in the order or certificate for the issue of the commission; and service upon him, or upon a grown up person, at the address stated in the order or Master's certificate, shall be sufficient. If the name or address stated in such order or certificate shall prove to be illusory or fictitious, or if the party so notified shall fail to attend, pursuant to the notice, the commission may be executed *ex parte*.

292  
Notice of  
execution of  
commissions.

8. In the event of any witness on his examination, cross-examination or re-examination, producing any book, document, letter, paper or writing, and refusing for good cause to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extract, shall be annexed to the witnesses' deposition.

293  
Copies as  
evidence.

9. Every witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion, by or before the said commissioners or commissioner.

294  
Oath of wit-  
ness.

10. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

295  
Examination  
through an  
interpreter.

11. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

296  
Depositions to  
be signed.

12. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the judge or officer on or before such day as may be ordered in that behalf, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of the action, by and on behalf of the said parties respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the party, as to his belief of such absence.

297  
Return of  
commission  
and use there-  
of as evidence.

13. Where, upon the application for a commission to take evidence, the opposite party shall desire to join in the commission and examine witnesses on his own behalf thereunder, or shall name a commissioner, each party is to pay the cost of the commission consequent upon the examination of his witnesses and the appointment of his commissioner, without prejudice to the question by whom such costs are ultimately to be borne: and if for any reason the commissioner named by either party shall refuse to act in the execution of the commission upon receiving 48 hours notice in writing from the other of

298  
Costs.

- them so to do, the commission may be executed by the commissioner giving such notice alone.
- 299**  
Stay of action. 14. The trial of the action shall be stayed until the return of the commission.
- 300**  
Order for commission to be read as including above particulars. 15. Every order for a commission shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variations therefrom, and any other directions, which the Court or Judge shall see fit to make.

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ORDER XXXIV.

EVIDENCE BY AFFIDAVIT.

- 301**  
When to be filed by plaintiff. 1. In case the parties in any action consent to the evidence being taken by affidavit as between the plaintiff and the defendant, the plaintiff within 14 days after such consent has been given, or within such time as the parties may agree upon, or a Judge in Chambers may allow, shall file his affidavits and deliver to the defendant or his solicitor a list thereof. (R. Sup. C., Order 38, R. 1.)
- 302**  
When to be filed by defendant. 2. The defendant within 14 days after delivery of such list, or within such time as the parties may agree upon, or a Judge in Chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof. (*Ib.*, R. 2; G. O. Chy., Nos. 268, 269.)
- 303**  
Filing affidavits in reply. 3. Within 7 days after the expiration of the said 14 days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matter strictly in reply, and shall deliver to the defendant or his solicitor a list thereof. (R. Sup. C., Order 38, R. 3.)
- 304**  
Cross-examination on affidavit. 4. Where the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination before the Court at the trial, such notice to be served at any time before the expiration of 14 days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production. (*Ib.*, R. 4.)
- 305**  
Compelling attendance of witness. 5. The party to whom such notice as is mentioned in the last preceding Rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined. (*Ib.*, R. 5.)
- 306**  
Notice of motion for judgment. 6. Where the evidence in any action is under this Order taken by affidavit, the notice of motion for judgment thereon shall be given at the same time or times after the close of the evidence, as in other cases is by these Rules provided after the close of the pleadings. (Comp. *Ib.*, R. 6.)

## ORDER XXXV.

## MOTION FOR NEW TRIAL IN JURY CASES.

1. Where there has been a trial by a jury, any application for a new trial shall be to a Divisional Court. (See R. Sup. C., Dec., 1876, R. 5.) **307** Application to what Court.
2. The application for a new trial shall be by motion calling on the opposite party to shew cause at the expiration of 8 days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. (R. Sup. C., March, 1879, R. 6.) **308** Application how made.
3. The application shall be made within the first 4 days of the sittings of the Divisional Court, for hearing such applications which may take place next after the trial. (Comp. *Ib.*, R. 6; R. Sup. C., March, 1879, R. 6; R. S. O., c. 50, ss. 284-286.) **309** Time to move.
- (a) In case the decision of a question raised at the trial is reserved, and is not given until the sittings aforesaid by the judge reserving the same, all motions respecting the trial shall be made within 10 days after the day on which the decision is given, if so many days expire in such sittings, and if not, then within the first 4 days of the ensuing sittings; and until the time for moving as aforesaid has expired, judgment shall not be signed unless the judge who tried the action certifies in the manner hereinafter provided, (R. S. O. c. 50, s. 285.)
- (b) In case of a trial during the sittings of a divisional court, all motions respecting the same shall be made within 6 days after the day on which the verdict is rendered, if so many days expire in such sittings, and if not, then within the first 4 days of the ensuing sittings; and until the time for moving as aforesaid has expired, judgment shall not be signed unless the judge who tried the action certifies under his hand, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification. (R. S. O. c. 50, s. 286.)
4. A copy of the order shall be served on the opposite party within 4 days from the time of the same being made. (Comp. R. Sup. C., Order 39, R. 2.) **310** Service of order nisi.
5. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only. (*Ib.*, R. 3; See R. S. O. c. 50, s. 289.) **311** Restrictions on new trials.
6. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question. (*Ib.*, R. 4; See R. S. O. c. 50, s. 289.) **312** New trial as to part.
7. An order to shew cause shall be a stay of proceedings in the action, unless the Court shall order that it shall not be so as to the whole or any part of the action. (R. Sup. C., Order 39, R. 5.) **313** Stay of proceedings.
8. On the argument of an order to shew cause, the counsel of the party supporting the application shall begin, and shall state fully the grounds of the application, and shall have the reply. **314** Counsel supporting application to begin and have reply.

## ORDER XXXVI.

## MOTION FOR JUDGMENT.

- 315**  
How judgment obtained. 1. Except where by the Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment. (R. Sup. C., Order 40, R. 1; G. O. Chy., Nos. 270-272;) Order 31, R. 21-23 *ante*; Order 37, R. 4, 5 *post*.
- 316**  
Motion where judgment at trial wrong on facts found. 2. Where at or after the trial of an action by a jury, the Judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment, and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the Judge having caused the finding to be wrongly entered with reference to the finding of the jury upon the question or questions submitted to them. (R. Sup. C., Dec., 1876, R. 7, 1st part.)
- 317**  
Motion where judgment is wrong on finding entered. 3. Where, at or after the trial of an action before a Judge, the Judge has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.  
(a) An application under this Rule may be to a Divisional Court of the High Court or to the Court of Appeal. (R. Sup. C., Dec., 1876, R. 7, 2nd part.)
- 318**  
After trial of issues of fact. 4. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and there is no direction of a Court or Judge for the entry of judgment, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties, within 10 days after his right so to do has arisen, then after the expiration of such 10 days any defendant may set down the action on motion for judgment, and give notice thereof to the other parties. (Comp. R. Sup. C., Order 40, R. 7.)
- 319**  
After trial of some only of the issues of fact. 5. Where issues have been ordered to be tried, or issues or questions of fact to be determined, in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact. (*Ib.*, R. 8.)
- 320**  
No motion after one year. 6. No action shall, except by leave of the Court or a Judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. (*Ib.*, R. 9.)
- 321**  
Postponement of motion by Court. 7. Upon a motion for judgment, or for a new trial, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly; or may, if it shall be of opinion that it has not sufficient materials

before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit. (*Ib.*, R. 10.)

8. Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, or in the examination of any other party, be entitled to; and it shall not be necessary to wait for the determination of any other question between the parties; or he may so apply where the only evidence consists of documents and such affidavits as are necessary to prove their execution or identity without the necessity of any cross-examination; or he may so apply where infants are concerned and evidence is necessary so far only as they are concerned, for the purpose of proving facts which are not disputed. The foregoing Rules of this Order shall not apply to such applications, and any such application may be made by motion as soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a Judge may, on any such application, give such relief, subject to such terms, if any, as such Court or Judge may think fit. (Comp. R. Sup. C., Order 40, R. 11; G. O. Chy., No. 270.)

**322**  
Summary relief on motion upon admissions in pleadings.

9. Where it is made to appear to the Court or a Judge, on the hearing of any application which may be pending before the Court or Judge, that it will be conducive to the ends of justice to permit it, the Court or Judge may direct the application to be turned into a motion for judgment, or a hearing of the cause or matter; and thereupon the Court or Judge may make such order as to the time and manner of giving the evidence in the cause or matter, and with respect to the further prosecution thereof, as the circumstances of the case may require; and upon the hearing it shall be discretionary with the Court or Judge to either pronounce a judgment or make such order as the Court or Judge deems expedient. (G. O. Chy., No. 614.)

**323**  
Pending application turned into motion for judgment or hearing of cause.

10. Where at any time after the writ of summons has been issued it is made to appear to the Court or a Judge on an *ex parte* application that it will be conducive to the ends of justice to permit a notice of motion for a judgment to be forthwith served, the Court or Judge may order the same accordingly; and when such permission is granted, the Court or Judge is to give directions, as to the service of the notice of motion and filing of the affidavits, as may be expedient.

**324**  
Motion for judgment by leave after service of writ

(2) Upon the hearing of such motion the Court may grant or refuse the application or instead of either granting or refusing the same, may give such directions for the examination of either parties or witnesses, or for the making of further inquiries, or with respect to the further prosecution of the suit, as the circumstances of the case may require, and upon such terms as to costs as the Court thinks right. (*See* G. O. Chy., Nos. 271, 272.)

## ORDER XXXVII.

### ENTRY OF JUDGMENT.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The forms in Appendix (I) hereto may be used for entering judgments, with such variations as circumstances may require. (Comp. R. Sup. C., Order 41, R. 1.) (*See* R. S. O., c. 50, s. 302.)

**325**  
Judgment, how entered.

- 326**  
Date of entry when judgment pronounced in Court. 2. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date. (*Ib.*, R. 2.)
- 327**  
Date of entry in other cases. 3. In all cases not within the last preceding Rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date. (*Ib.*, R. 3.)
- 328**  
Entry on affidavit, etc. 4. Where under the Act or these Rules, or otherwise, it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly. (*Ib.*, R. 4.)
- 329**  
Entry on order or certificate. 5. Where by the Act or these Rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate, sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly. (*Ib.*, R. 5.)
- 330**  
Nonsuit. 6. Any judgment of nonsuit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, accident, or otherwise, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a Judge shall seem just. (*Ib.*, R. 6; G. O. Chy., No. 184.)
- 331**  
General provisions where a sale is ordered. 7. Where a sale is ordered, the master may cause the property, or a competent part thereof, to be sold either by public auction, private contract, or tender, or part by one mode and part by another, as he may think best for the interest of all parties, and he may fix an up-set price or reserved bidding, but such price or bidding must be so fixed at the meeting held by him for the purpose of settling the advertisement, and making the other arrangements preparatory to the sale, and must be notified in the conditions of sale. The master is to settle all necessary conveyances for the purpose of carrying out the sale in case the parties differ, or in case there shall be any persons under any disability (other than coverture) interested in such sale.
- 332**  
Master to take account in redemption suits. 8. Upon a reference under a judgment for redemption, the master is, without any special direction, to take an account of what is due to the defendant for principal money and interest, and is to tax to him his costs, and also appoint a time and place or times and places for payment according to the present practice of the court in that behalf.
- 333**  
Order on default. 9. In a redemption suit, in default of payment being made according to the report, the defendant is to be entitled on an *ex parte* application in Chambers to a final order of foreclosure against the plaintiff, or to an order dismissing the bill with costs to be paid, by the plaintiff to the defendant, forthwith after taxation thereof.
- 334**  
Directions where plaintiff in redemption suit is foreclosed. 10. In a redemption suit where the plaintiff is declared foreclosed, directions may be given either by the final order foreclosing the plaintiff, or by subsequent orders, that all necessary inquiries be made, accounts taken and proceedings had for redemption or foreclosure, or redemption or sale, as against any subsequent incumbrancers, or for the adjustment of the relative rights and liabilities of the original defendants as

among themselves, and such order shall have the same force and effect as a judgment obtained at the suit of the original defendant.

11. Where the order is for redemption or foreclosure, or redemption or sale, such proceedings are in such case to be thereupon had, and with the same effect as in a suit for foreclosure or sale, and in such case the last incumbrancer is to be treated as the owner of the equity of redemption. **335** Procedure where order is for redemption, &c.

12. In a suit for foreclosure or sale upon payment by the defendant, or in a suit for redemption upon payment by the plaintiff, or payment of the amount found due, the plaintiff or defendant shall, unless the decree otherwise directs, assign and convey the mortgaged premises in question to the defendant, (or plaintiff, as the case may be,) making the payment, or to whom he may appoint, free and clear of all incumbrances done by him, and deliver up all deeds and writings in his custody or power relating thereto, upon oath, and in case of a corperation the affidavit shall be made by the officer thereof having the custody of such deeds and writings. **336** Assignment of property and delivery of documents.

13. The foregoing orders, 8-13, are to apply to all cases of reference to the master in suits for foreclosure, sale or redemption. (See G. O. Chy. No. 397.) **337** Application of rules 8-13.

14. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion without an appeal. (R. Sup. C., Dec. 1879, R. 5.) **338** Correction of mistakes in judgments and orders.

## ORDER XXXVIII.

### EXECUTION.

1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree, for the payment of money, of any of the Superior Courts, might have been enforced at the time of the passing of the said Act. (Comp. R. Sup. C., Order 42, R. 1.) **339** Enforcing judgment for recovery of money.

2. A judgment for the payment of money into Court may be enforced by any mode by which a judgment or decree for that purpose of any such Court might have been enforced at the time of passing the said Act. (Comp. *Ib.*, R. 2.) **340** For payment into Court.

3. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. (*Ib.*, R. 3.) **341** For recovery of land.

4. A judgment for the recovery of any property other than land or money may be enforced: **342** For recovery of other property.

By writ for delivery of the property:

By writ of attachment:

By writ of sequestration. (*Ib.*, R. 4.)

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal. (*Ib.*, R. 5.) **343** Judgment requiring person to do or leave undone.

6. In these Rules the term "writ of execution" shall include writs of fieri facias, capias, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the expression "issuing execution against any party" shall **344** Meaning of "Writ of execution," and "issuing of execution."

mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case. (*Ib.*, R. 6.)

**345**  
Judgment for  
conditional  
relief.

7. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried. (*Ib.*, R. 7.)

**346**  
Judgment  
against  
partners.

8. Where a judgment is against partners in the name of the firm, execution may issue in manner following:

- (a) Against any property of the partners as such;
- (b) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner;
- (c) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. (*Ib.*, R. 8; *ante* Order 8, R. 8.)

**347**  
*Præcipe* for  
writ.

9. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it if he do so in person. The forms in Appendix (E) hereto may be used, with such variations as circumstances may require. (*Ib.*, R. 10 as amended by R. Sup. C. June, 1876, R. 17.)

**348**  
Indorsement  
of name and  
address.

10. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same; and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or other place, and also the name of the street, and number of the house of such plaintiff's or defendant's residence, if any such there be. (Comp. R. Sup. C., Order 42, R. 11; Reg. Gen. T. T., 1856, No. 55, Ont.)

**349**  
Date.

11. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (J) hereto may be used, with such variations as circumstances may require. R. Sup. C., Order 42, R. 12.)

12. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered. (*Ib.*, R. 13; *See* R.S.O., c. 66, s. 44.) **350** Poundage etc.

13. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 6 per cent., per annum from the time when the judgment was entered up; provided that in cases where there is an agreement between the parties that more than 6 per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed. (Comp. R. Sup. C., Order 42, R. 14; Reg. Gen. T. T., 1856, No. 55, Ont.) **351** Indorsements on writ.

14. Every person to whom any sum of money or any costs shall be payable under a judgment, shall, immediately after the time when the judgment was duly entered, be entitled to sue out one or more writs of *fieri facias* to enforce payment thereof, subject nevertheless as follows: **352** *Fi. fa.*, how soon it may issue.

(a) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.

(b) The Court or Judge at the time of giving judgment, or the Court or a Judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the period hereinbefore prescribed. (Comp. R. Sup. C., Order 42, R. 15.)

15. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, be renewed by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ,—either by being marked in the margin with a memorandum signed by the proper officer who issued such writ, or by his successor in office, stating the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and having the like memorandum; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof. (Comp. *Ib.*, R. 16; R. S. O., c. 66, s. 11.) **353** Currency of writ.

16. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with the memorandum in the last preceding Rule mentioned, shewing the same to have been renewed, shall be sufficient *prima facie* evidence of its having been renewed. (Comp. *Ib.*, R. 17; R.S.O., c. 66, s. 12.) **354** Proof of renewal.

17. As between the original parties to a judgment, execution may issue at any time within 6 years from the recovery of the judgment. (R. Sup. C., Order 42, R. 18; *See* R. S. O., c. 50, s. 322.) **355** Execution within 6 years.

18. Where 6 years have elapsed since the judgment, or where any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge, if satisfied that the party so applying is entitled to issue execution, may make an order to that effect, or may order **356** Execution after 6 years, or change of parties.

that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise, as shall seem just. (R. Sup. C., Order 42, R. 19.)

357  
Execution on orders.

19. Every order of the Court or a Judge, whether in an action, cause, or matter, may be enforced in the same manner as a judgment to the same effect. (*Ib.*, R. 20; See R. S. O. c. 67, s. 12.)

358  
In case of persons not parties.

20. In cases other than those mentioned in Rule 18, any person, not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action. (R. Sup. C., Order 42, R. 21.)

359  
Application in lieu of *audita querela*.

21. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief, and upon such terms, as may be just. (*Ib.*, R. 22.)

360  
Saving of existing rights.

22. Nothing in any of the Rules of this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever. (*Ib.*, R. 23.)

361  
Order of writs not affected.

23. Nothing in this Order shall affect the order in which writs of execution may be issued. (*Ib.*, R. 24.)

## ORDER XXXIX.

### WRITS OF FIERI FACIAS, &c.

362  
Writs of *fi. fa.*

1. Writs of *fi. facias* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed. (R. Sup. C., Order 43, R. 1.)

363  
Other writs.

2. Writs of *venditioni exponas* may be issued and executed in the same cases and in the same manner as heretofore. (Comp. *Ib.*, R. 2.)

## ORDER XL.

### ATTACHMENT OF THE PERSON.

364  
Effect of attachment

1. A writ of attachment against the person shall be issued under the same circumstances and in the same manner and shall have the same effect as heretofore according to the practice of the Court of Chancery. (Comp. R. Sup. C., Order 44, R. 1; R. S. O., c. 67, ss. 10, 11; G. O. Chy., Nos. 288-294.)

365  
Leave to issue.

2. No such writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued. (R. Sup. C., Order 44, R. 2.)

## ORDER XLI.

## ATTACHMENT OF DEBTS.

1. Where a judgment is for the recovery by, or payment to, any person, of money, the party entitled to enforce the judgment, may without an order examine the judgment debtor upon oath before a Master, or Local Master, or an Examiner, or before one of the Clerks or Deputy Clerks of the Crown, or before the Judge of the County Court of the County within which such debtor resides, or before any official referee, touching his estate and effects, and as to the property and means he had when the debt or liability which was the subject of the action in which judgment has been obtained against him was incurred, and as to the property and means he still has of discharging the said judgment, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him. (R. S. O., c. 50, s. 304; See also c. 49, s. 17; R. Sup. C., Order 45.)

366

Application for examination of judgment debtor.

2. In case the judgment is against a body corporate, the person entitled to enforce the judgment may in like manner examine any of the officers of such body corporate, upon oath, before the Judge of the County Court, or other officer, referred to in the next preceding rule, touching the names and residences of the stockholders in said body corporate, the amount and particulars of stock held or owned by each stockholder, and the amount paid thereon; also as to any and what debts are owing to the said body corporate; and as to the estate and effects of the body corporate; and as to the disposal made by the body corporate of any property since contracting the debt or liability, in respect of which the said judgment was obtained. (See R. S. O., c. 49, s. 19.)

367

Application for examination of officers of corporations.

3. Any person liable to be examined under either of the preceding two rules may be compelled to attend and testify, and to produce books and documents, in the same manner and subject to the same rules of examination, and the same consequences of neglect to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness.

368

Compelling attendance.

4. Any person liable to be examined under either of the two preceding Rules, may be served with an appointment signed by the Judge or officer; such service to be made at least 48 hours before the time appointed for the examination; and the person to be examined is to be paid the same fees as a witness. (a) In case of such service, the same shall have the same effect as the service of a Rule or Order under the present practice, for the purposes of the 18th and 19th sections of the Administration of Justice Act, and the 305th section of the Common Law Procedure Act.

369

Service of appointment.

5. The Court or a Judge may, upon the *ex parte* application of the judgment creditor, or the person entitled to enforce the judgment, either before or after the oral examination mentioned in the preceding two rules, and upon affidavit by himself or his solicitor, or some other person or persons aware of the facts respectively, stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within Ontario, order that all debts owing or accruing from such third

370

Court or Judge may order attachment of debts.

Order that  
garnishee  
appear.

person (hereinafter called the garnishee) to the judgment debtor, shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to shew cause why he should not pay the judgment creditor, or the person entitled to enforce the judgment, the debt due from such garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt. (R. Sup. C., Order 45, R. 2; comp. R. S. O. c. 50, s. 307.)

371

Order for at-  
tachment to  
bind debts.

6. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the Court or Judge shall direct, shall bind such debts in his hands. (R. Sup. C., Order 45, R. 3; comp. R. S. O. c. 50, s. 308.)

372

Order for  
execution  
against gar-  
nishee.

7. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt. (R. Sup. C., Order 45, R. 4; comp. R. S. O. c. 50, s. 309.)

373

Issue where  
garnishee dis-  
putes liability.

8. If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined. (R. Sup. C., Order 45, R. 5; comp. R. S. O. c. 50, s. 310.)

374

Order for third  
person to  
appear.

9. Where in proceeding to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear and state the nature and particulars of his claim upon such debt. (R. Sup. C., Order 45, R. 6; comp. R. S. O. c. 50, s. 313.)

375

Proceedings as  
to claims of  
third persons.

10. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or may order any issue or question to be tried or determined according to the preceding Rules of this Order, and may bar the claim of such third person, or may make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable. (R. Sup. C., Order 45, R. 7; comp. R. S. O., c. 50, s. 313, sub-s. 2.)

376

Garnishee dis-  
charged by  
payment.

11. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceedings may be set aside or the judgment reversed. (R. Sup. C., Order 45, R. 8; comp. R. S. O., c. 50, s. 317.)

12. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer. (R. Sup. C., Order 45, R. 9; comp. R. S. O., c. 50, s. 320.)

377

Attachment book to be kept by proper officer.

13. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, including the examination of the debtor, shall be in the discretion of the Court or a Judge. (R. Sup. C., Order 45, R. 10; comp. R. S. O., c. 50, s. 321.)

378

Costs of application.

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## ORDER XLII.

### WRIT OF POSSESSION (LANDS).

1. A judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the Superior Courts of Common Law. (R. Sup. C., Order 48, R. 1; See G. O. Chy., No. 294.)

379

Writ to recover possession of land.

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person on, or at any specified time after, being served with the judgment, the person prosecuting such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit shewing due service of such judgment and that the same has not been obeyed. (R. Sup. C., Order 48, R. 2.)

380

Writ may issue on filing affidavit.

3. \*A writ of possession shall have the effect of a writ of assistance as well as of a writ of *habere facias possessionem*.

381

Effect of writ.

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## ORDER XLIII.

### WRIT OF DELIVERY (CHATELS).

A writ for delivery of any property other than land or money may be issued and enforced in the manner heretofore in use in actions of detinue in the Superior Courts of Common Law. (R. Sup. C., Order 49.)

382

How issued and enforced.

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## ORDER XLIV.

### CHANGE OF PARTIES BY DEATH, &C.

(Comp. R. S. O., c. 50, ss. 223-242; G. O. Chy., Nos. 337-341.)

1. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*. (R. Sup. C., Order 50, R. 1; See R. S. O. c. 50, s. 228.)

383

Action not to abate by reason of marriage etc.

- 383  
Assignment  
*pendente lite*.
2. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the action may be continued by or against the person to or upon whom such estate or title has come or devolved. (R. Sup. C., Order 50, R. 3; See G. O. Chy., No. 337; R. S. O., c. 50, s. 229.)
- 384  
Order to add parties on change of interest how obtained.
3. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action and such new party, may be obtained *præcipe*, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence. (Comp. R. Sup. C., Order 50, R. 4; R. S. O., c. 38, s. 40; Imp. Act 15 and 16 Vic., c. 86, s. 52; G. O. Chy., No. 537.)
- 385  
Service of order.
4. An order so obtained shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties to the action or their solicitors, and also upon each such new party (unless the person making the application be himself the only new party), and the order shall from the time of such service, subject nevertheless to the next 5 following Rules, be binding on the persons served therewith. (Comp. R. Sup. C., Order 50, R. 5; G. O. Chy., No. 338.)
- 386  
Application to discharge order.
5. Where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture, has a guardian *ad litem* in the action, shall be served with such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within 12 days from the service thereof. (R. Sup. C., Order 50, R. 6; G. O. Chy., No. 339.)
- 387  
Indorsement on order.
6. Upon every copy of such order served, there shall be indorsed a memorandum in the form or to the effect set forth in Form 19 in Appendix (B) hereto. (See G. O. Chy., No. 341.)
- 388  
Application to discharge order by persons under disability
7. Where any person being under any disability other than coverture, and not having had a guardian *ad litem* appointed in the action, is served with any such order, such person may apply to the Court or a Judge to discharge or vary such order, at any time within 12 days from the appointment of a guardian *ad litem* for such party, and until such period of 12 days shall have expired such order shall have no force or effect as against such last mentioned person. (R. Sup. C., Order 50, R. 7; G. O. Chy., No. 340.)
- 389  
Application to discharge order when served out of Ontario.
8. Where the order is served out of Ontario, the party served is to have the same time to apply to discharge the order, as a defendant has to appear to a writ of summons so served; but an application may be made for shortening the time. (Comp. G. O. Chy., No. 342.)
- 390  
Application in case of order allowing service by publication.
9. Where the Court or a Judge authorizes publication instead of service, the Court or Judge is at the same time to appoint such time for applying to discharge the order as seems proper. (Comp. G. O. Chy., No. 343.)

## ORDER XLV.

## TRANSFERS AND CONSOLIDATION OF ACTIONS.

1. Actions may be transferred from one Division of the High Court to another Division by order of the Presidents of such Divisions. (See R. Sup. C., Order 51, R. 2.)

391

Transfer by order.

2. The Presidents of the Queen's Bench, Chancery and Common Pleas Divisions shall, from time to time as occasion may require, meet together and examine the list of motions, rules and other matters set down for argument in each Divisional Court of the High Court, and direct the transfer of such and so many of the said motions, rules and other matters from one Divisional Court to another as shall, as nearly as possible by their judgment, equalize the amount of business to be done in the said Courts. (See 41 Vic., c. 8, s. 4, Ont.)

362

Presidents of Divisions to make transfers necessary to equalize business.

3. Where an order has been made for the administration of the assets of any testator or intestate, a Judge of any Division shall have power, without any further consent, to order the transfer to such Division of any action pending in any other Division by or against the executors or administrators of the testator or intestate whose assets are being so administered. (R. Sup. C., June, 1876, R. 18.)

393

Transfer under administration order.

4. Actions in any Division or Divisions may be consolidated by order of the Court or a Judge in the manner heretofore in use in the Superior Courts of Common Law. (R. Sup. C., Order 51, R. 4.)

394

Consolidation of actions.

## ORDER XLVI.

## INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS, OR INTERIM PRESERVATION OF PROPERTY, &amp;c.

1. Where by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured. (R. Sup. C., Order 52, R. 1.)

395

Order for interim preservation of property.

2. It shall be lawful for the Court or a Judge, on the application of any party to an action, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once. (*Ib.*, R. 2.)

396

Sale of perishable goods.

3. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action; and for all or any of the purposes aforesaid to authorize any person or persons to enter upon or into any land or building in the possession of any party to such action; and for all or any of the purposes aforesaid to authorize any samples to be

397

Order for detention and inspection of property.

taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. (*Ib.*, R. 3.)

398  
Application  
under rules  
2 & 3.

4. An application for an order under section 19, sub-section 8, of the Act, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section 8, it may be made either *ex parte* or on notice, and if for an order under the said Rules 2 or 3 of this Order, it may be made, after notice to the defendant, at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance, by the party making the application. (*Ib.*, R. 4.)

399  
Application  
under rule 1.

5. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings, or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge. (*Ib.*, R. 5.)

400  
Writ of in-  
junction  
abolished.

6. No writ of injunction shall be issued in any case. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction now has. (R. Sup. C., April, 1880, R. 32.)

401  
Amount of  
lien claimed  
may be paid  
into Court,  
and property  
delivered up.

7. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter-claim to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge, at any time after such last mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, may order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it. (R. Sup. C., Order 52, R. 6.)

402  
Conduct of  
sale under  
trusts of will  
or settlement

8. Where the trusts of any will or settlement are being administered, and a sale is ordered of any property vested in the trustees of such will or settlement upon trust for sale or with power of sale by such trustees, the conduct of such sale shall be given to such trustees, unless the Judge shall otherwise direct. (R. Sup. C., March, 1879, R. 7.)

## ORDER XLVII.

### MOTIONS AND OTHER APPLICATIONS.

403  
Application to  
Court or Judge  
in Court to be  
by motion.

1. Where by these Rules any application is authorized to be made to the Court or a Judge in an action, such application shall be made by motion. (R. Sup. C., Order 53, R. 1.)

404  
No rule or  
order nisi  
except when  
authorized.

2. No rule or order to shew cause shall be granted in any action or matter, except in the cases in which an application for such rule or order is expressly authorized by these Rules. (Comp. *Ib.*, R. 2.)

3. Except where (by the practice existing at the time of the passing of the said Act) any order or rule has heretofore been made *ex parte* absolute in the first instance, and except where by these Rules it is otherwise provided, and except where the motion is for a rule or summons to shew cause only—no motion shall be made without previous notice to the parties affected thereby. But the Court or Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte*, upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set aside or vary the same. (*Ib.*, R. 3.)

405  
Notice of motion when orders *ex parte* can be made.

4. Unless the Court or Judge give special leave to the contrary, there must be at least 2 clear days between the service of a notice of motion and the day named in the notice for hearing the motion. (*Ib.*, R. 4.)

406  
2 clear days' notice.

5. If on the hearing of a motion or other application, the Court or Judge shall be of opinion that any person to whom notice has not been given ought to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose. (*Ib.*, R. 5.)

407  
All proper parties not served.

6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit. (*Ib.*, R. 6.)

408  
Adjournment.

7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose. (*Comp. Ib.*, R. 7.)

409  
Service before appearance.

8. The plaintiff may also, without any special leave, serve a notice of motion for an injunction, and may, by leave of the Court or a Judge to be obtained *ex parte*, serve any other notice of motion, upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant. (*Comp. Ib.*, R. 8.)

410  
Service with writ or before time for appearance.

## ORDER XLVIII.

### APPLICATIONS AT CHAMBERS.

1. Every application at chambers in Toronto authorized by these Rules and not made *ex parte* shall be made in a summary way, on notice instead of by summons. (*Comp. R. Sup. C.*, Order 54, R. 1.)

411  
Applications to be made in a summary way.

2. An order shall be in the Form No. 2 in Appendix (G) hereto, with such variations as circumstances require. It shall be marked with the name of the Judge or officer by whom it is made. (*R. Sup. C.*, April 1880, R. 39.)

412  
Form of order.

3. Every appeal to the Court from any decision at chambers shall be by motion, and shall be made within 8 days after the decision appealed against, or if no Court to which such appeal can be made shall sit within such 8 days, then on the first day on which any such Court may be sitting after the expiration of such 8 days. (*Comp. R. Sup. C.*, Order 54, R. 6, amended by *R. Sup. C.*, March, 1879, R. 8.)

413  
Manner and time of appealing therefrom.

## ORDER XLIX.

## OFFICES AND OFFICERS.

414  
Officers to be  
auxiliary to  
one another.

1. All the officers of the Supreme Court shall be auxiliary to one another for promoting the correct, convenient, and speedy administration of business.

415  
Judgment  
Clerks.

2. Two of the officers of the High Court shall, in addition to their other duties, be judgment clerks of the High Court, for the purpose of settling the form and terms of such special judgments as may be referred to them for that purpose by any Divisional Court, or a Judge of any Division, or by the Master in Chambers.

416  
Deputy Clerks  
of the Crown  
and Deputy  
Registrars.

3. Where the offices of Deputy Clerk of the Crown and Deputy Registrar in any county are not held by the same person, the Deputy Clerk of the Crown shall in actions in the Queen's Bench and Common Pleas Divisions have the powers and duties of a Deputy Registrar (not local Master), in addition to the powers and duties heretofore belonging to a Deputy Clerk of the Crown; and the Deputy Registrar shall in actions in the Chancery Division have the powers and duties of a Deputy Clerk of the Crown, in addition to the powers and duties heretofore belonging to a Deputy Registrar. Where the two offices are united in the same person he shall be styled Local Registrar of the High Court; and every reference in these Orders to the said two offices, or either of them, shall be deemed to apply to the Local Registrar. (*See G. O. Chy., Nos. 33, 34, 35, 37, 38, 39, 73, &c.*)

417  
Entry of  
orders.

4. Subject to the foregoing Orders, where an action is commenced in the office of a Deputy Registrar or Deputy Clerk of the Crown or Local Registrar, all such orders in the action as require to be entered (except orders made by the County Court Judge or the local Master of the county under the authority and jurisdiction vested in them under these Rules) shall be entered at Toronto; and, where necessary, an office copy of the order so entered shall be transmitted or delivered to the Deputy Registrar, Deputy Clerk of the Crown or Local Registrar to be filed with the proceedings in the action. (*See R. Sup. C., Order 35, Rule 2.*)

418  
Entry of judg-  
ment and issue  
of execution by  
Deputy Re-  
gistrars.

5. Sections 302 and 303 of the Common Law Procedure Act and section 7 of the "Execution Act" shall apply as nearly as may be to Deputy Registrars as well as Deputy Clerks of the Crown. (*See R. Sup. C., Order 35, R. 3; R. S. O., c. 50, ss. 12, 302, 303; c. 66, s. 7.*)

419  
Master in  
Chambers.

6. There shall be an officer of the Supreme Court to be named the Master in Chambers, who, in regard to all actions and matters in the High Court, shall have the power, authority and jurisdiction heretofore in like cases possessed in the Superior Courts respectively, by the Clerk of the Crown and Pleas of the Court of Queen's Bench and by the Referee in Chambers of the Court of Chancery;

(a) The said officer shall not have authority or jurisdiction in respect of the matters excepted in regard to the Clerk of the Crown and Pleas of the Queen's Bench by the Rules of the Judges of the Courts of Queen's Bench and Common Pleas of Hilary Term, 1870, or in respect of the matters excepted in regard to the Referee by the 560th of the orders of the Court of Chancery, or in respect of appeals from Judges of County

Courts or Local Masters, or in respect of any other matter which by these orders is expressly required to be done by a Judge of the High Court. (See R. Sup. C., Order 54, R. 2.)

7. Any official Referee, upon the request of the Master in Chambers or of a Judge of the High Court, may sit with or for such Master; and while sitting for him shall have all the authority and power of such Master, but shall not be entitled to any fees. (R. S. O. c. 38, s. 9.)

420  
Official referee may sit in chambers for master.

8. The County Court Judge of the County in which an action is brought shall, from and after the first day of January, 1882, have the same power and authority in the action as the Master in Chambers aforesaid, save and except that the authority of such County Court Judges shall not extend to granting leave for service out of Ontario, or to allowing service out of Ontario, of a writ of summons or of notice of a writ of summons; provided also that in counties in which there is a local Master who does not practise as a Barrister or Solicitor, and who has not taken out a certificate to practise, such local Master shall, in regard to causes and actions brought in his county in the Chancery division, have (in addition to his powers as a local Master) the jurisdiction, power, and authority hereinbefore given to the County Court Judge; and in such counties the County Court Judge shall have and exercise the said jurisdiction, power, and authority only in regard to causes and actions brought in his county in the Queen's Bench and Common Pleas Divisions. (See R. Sup. C., June 1876, R. 19; R. S. O., c. 50, s. 148; ante s. 71 of Act.)

421  
Authority of County Court Judges.

(a) Such power and authority shall not apply to any action in which the writ is issued in the County of York, or (except by consent) to any action wherein the solicitors for all parties do not reside or have not offices in the county town of the county in which the action is brought, or wherein any party who has no solicitor does not reside in, or has not a place of business in, the county or union of counties. Such consent by a solicitor may be general by a memorandum in writing filed in the office of the Deputy Registrar or Deputy Clerk of the Crown; or may be confined to any particular action or application and be manifested as in the case of any other consent by a solicitor in a cause or matter. (See R. S. O., c. 50, s. 148, sub-s. 2.)

9. The power and authority of a County Court Judge to make *ex parte* orders shall not be subject to the limitation set forth in the preceding paragraph (a), and may be made though the Solicitors for all parties do not reside in the same County.

422  
*Ex parte* orders by County Judge.

10. But no money shall be distributed or paid out for costs or otherwise, without the order of a Divisional Court, or of a Judge of the High Court in court or chambers, (except money paid into court by a defendant by way of satisfaction or amends, and not belonging in whole or in part to an infant or *feme covert*); and on the application for such order, the Court or Judge may review, amend or refer back to the master his report or order, or make such other order as the Court or Judge deems proper. (See S. O. Chy., No. 639.)

423  
Payment out of Court.

11. Every application to a County Court Judge or local Master under the Act or these Rules shall, where notice of the application is necessary, be made in a summary way by summons. (See R. Sup. C., Order 35, R. 5.)

424  
Manner of application

(a) A summons shall be in the form No. 105 in Appendix (G)

hereto, with such variations as circumstances require. It shall be addressed to all the persons on whom it is to be served. (See R. Sup. C., April, 1880, R. 34.)

(b) A summons shall be prepared by the applicant or his solicitor, and shall be signed by the proper officer and when so signed shall be deemed to be issued. The person obtaining a summons shall leave a copy thereof with the officer signing the same. (See R. Sup. C., April, 1880, R. 35.)

425  
Power to refer  
to Judge of  
High Court.

12. If any matter appears to the County Court Judge, Master in Chambers or local Master to be proper for the decision of a Judge of the High Court, he may refer the same to such Judge; and such Judge of the High Court may either dispose of the matter, or refer the same back to the County Court Judge or officer aforesaid with such directions as such Judge of the High Court may think fit. (See R. Sup. C., Order 35, R. 6; R. Sup. C., Order 54, Rule 3; Reg. Gen. Hil., T. 1870.)

426  
Appeal.

13. Any person affected by any order or decision of the County Judge or officer aforesaid may appeal therefrom to a Judge of the High Court at Chambers.

(a) Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the Judge or officer aforesaid had jurisdiction only by consent.

(b) The appeal shall be by motion, on notice served within 4 days after the decision complained of; or within such further time as may be allowed by a Judge of the High Court or by the County Court Judge or officer aforesaid whose decision is complained of.

(c) The motion shall be made within 8 days after the decision has been made which is appealed against, or within such further time as may be allowed as aforesaid.

(See R. Sup. C., Order 35, R. 7; R. Sup. C., Order 54, R. 4-6; Reg. Gen. Hil., T. 1870.)

(d) In such case, the Deputy Registrar, Deputy Clerk of the Crown or local Clerk, shall, on a præcipe being filed in this behalf, transmit to the proper officer of the High Court of Justice all documents filed in his office and required for disposing of the appeal; and the same shall be transmitted by mail, prepaid and registered, except where all parties interested in such documents file a consent to any other mode of transmission. The said documents shall be returned in like manner when the appeal has been disposed of. (See R. S. C., Order 35, Rule 14.)

(e) The appeal shall be no stay of proceedings unless so ordered by a Judge of the High Court or by the Judge or officer whose decision is complained of. (See R. Sup. C., Order 35, R. 8; *Ib.*, Order 54, R. 5.)

## ORDER L.

### COSTS.

427  
To be in discre-  
tion of Court.

Saving as to  
trustee, etc.

Of issues tried  
before jury.

1. Subject to the provisions of the Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity: Provided, that where any action or issue is tried by a jury, the costs shall follow the event, unless, upon application made at

the trial, for good cause shewn, the Judge before whom such action or issue is tried or the Court shall otherwise order. (R. Sup. C., Order 55, R. 1.)

2. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such time or times and in such manner and form, as the Court or a Judge shall direct. (R. Sup. C., February, 1876, R. 7; G. O. Chy., No. 321; R. S. O., c. 40, s. 97.)

3. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge otherwise directs, be given to the party or persons requiring the security, and not to an officer of the Court. (See R. Sup. C., April, 1880, R. 41; Court of Appeal Orders, March, 1878, No. 2, Ont.; G. O. Chy., No. 321.)

4. Where it appears, by the writ of summons, notice, or other proceeding by which a suit is instituted, or by an indorsement thereon, that the plaintiff resides out of Ontario, the defendant shall be entitled on præcipe to an order requiring the plaintiff within 4 weeks from the service of the order to give security in \$400 for the defendant's costs of the action staying all further proceedings in the meantime, and directing that in default of such security being given the action be dismissed with costs against such defendant, unless the Court or Judge upon special application for that purpose shall otherwise order.

5. Until a tariff of fees payable in stamps or otherwise is provided by Rule of Court, approved by the Lieutenant-Governor in Council, the fees to be so payable shall be the fees now so payable on similar proceedings (if any) in the Courts of Queen's Bench and Common Pleas; and where there is no similar proceeding in those courts, the fees to be so paid shall be the fees now payable on similar proceedings in the Court of Chancery.

6. As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 10 cents per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof. (R. Sup. C., of Aug. 12, 1875 "Costs," R. 16.)

7. Where a petition in any cause or matter is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be \$5. The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. (Comp. *Ib.*, R. 17.)

8. The Court or Judge may, at the hearing of any cause or matter, or upon any application or procedure in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit, evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, un-

428

Amount of security for costs.

429

Security for costs where given by bond.

430

Security for costs, order for.

431

Stamps.

432

Copies of documents in possession of another party.

433

Tender of costs, on service of petition.

434

Disallowance of costs of unnecessary proceedings.

necessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed; or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof, as he shall find to be improper, unnecessary, or to contain unnecessary matter, or to be of unnecessary length. In such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so. (*Ib.*, R. 18.)

435  
Set-off of costs.

9. In any case in which, under the preceding Rule No. 8, or any other rule of Court, or by order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered. (*Ib.*, R. 19.)

436  
Unnecessary appearance at Chambers.

10. Where any party appears upon any application or proceeding in Court or at Chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance, unless the Court or Judge shall expressly direct such costs to be allowed. (*Ib.*, R. 21.)

437  
General powers of taxing officers.

11. There shall be two or more taxing officers of the Supreme Court; and they and each of them shall for the purpose of any proceeding before them or him, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been performed by the Registrar of the Court of Appeal or by any of the Masters, Taxing Officers, Registrars, Deputy Registrars, or other officers of any of the Courts whose jurisdiction is by the Act vested in the High Court of Justice or Court of Appeal; and shall, in respect thereof, have such powers and authorities as previous to the commencement of the Act were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocators, requiring any party to be represented by a separate solicitor; and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge. (*Ib.*, R. 23.)

438  
Revision of bills of costs.

12. The preceding Rule shall not be construed as interfering with the power heretofore possessed by local officers to tax costs.

(a) Every bill of costs in a suit pending in the Court of Chancery at the commencement of the Act, every bill of costs in any action thereafter brought in any Division of the High Court for the administration of an estate, or for partition, and

every bill in any action where the amount taxed affects the interest of an infant, shall be subject to revision according to the practice hitherto prevailing in the Court of Chancery: and the Orders of that Court numbered from 310 to 313 inclusive shall in other respects be deemed applicable thereto.

(b) In other cases any party interested may as of right have the taxation of the local officer revised, without giving the 2 days' notice to the opposite party required in the 353rd section of the Common Law Procedure Act (R. S. O., ch. 50); which section shall in other respects apply to all the divisions of the High Court; but, pending such revision, judgment may be entered and execution issued, unless the Court or a Judge shall otherwise order, and any reduction on revision shall be deducted from the amount indorsed on the execution.

(c) In the cases last aforesaid, the party desiring the revision shall give notice thereof to the opposite party, and on a præcipe being filed with such local officer, such officer is to transmit the bill to the taxing officer at Toronto for revision, and the practice thereon is to be as provided by the said Chancery Orders.

13. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested. (*Ib.*, R. 24.)

14. Where any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect. (*Ib.*, R. 25.)

15. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party. (*Ib.*, R. 26.)

16. Where a solicitor's bill of fees, charges and disbursements as delivered to a client or other person is referred to the Master to be taxed, the solicitor is to give credit for all sums of money by him received from or on account of the said client, and is to refund what, if anything, he may on such taxation appear to have been overpaid.

And the Master is to tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the cost of the reference, to be paid according to the event of the taxation pursuant to the statute.

And the solicitor is not to commence or prosecute any action or suit touching the demand pending the reference without leave of the Court or a Judge.

And upon payment by the said client or other person of what (if anything) may appear to be due to the solicitor, the solicitor (if required) is to deliver to the said client or other person, or as he may direct, all deeds, books, papers, and writ-

439  
Parties to attend taxations.

440  
Neglect to bring in or tax costs.

441  
Taxations between party and party.

442  
Particulars of orders for taxation.

ings in the said solicitor's possession, custody, or power, belonging to the said client.

The order shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variations therefrom, and any other directions which the Court or Judge shall see fit to make.

443  
Order of course  
to issue on  
præcipe.

17. The order, when grantable of course, shall be issued on præcipe by the registrar, deputy registrar, local clerk, or deputy clerk of the crown.

444  
Application of  
former rules,  
orders and  
practice.

18. The rules, orders, and practice of any Court, whose jurisdiction is vested in the High Court of Justice or Court of Appeal, relating to costs, and to the allowance of the fees of solicitors and attorneys, and to the taxation of costs, existing prior to the commencement of the Act, shall, in so far as they are not inconsistent with the Act and the Rules of Court in pursuance thereof, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal. (Comp. *Ib.*, R. 28; R. S. O., c. 50, s. 334.)

445  
Supervision of  
taxing officers.

19. The taxing officers shall perform their duties under and subject to any supervision which from time to time may appear to the Judges of the Supreme Court to be necessary or proper, and may by them be directed, in order to secure accuracy and uniformity in the proceedings of the taxing officers.

446  
Objection to  
taxation.

20. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items, or parts or part thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same. (R. Sup. C., Aug, 1875; R. 30.)

447  
Review of  
taxation by  
taxing officer.

21. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto. (*Ib.*, R. 31.)

448  
Review of  
taxation by  
judge.

22. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may apply to a Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as to the Judge may seem just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid. (*Ib.*, R. 32.)

449  
Evidence  
thereon.

23. Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof unless the Judge shall otherwise direct. (*Ib.*, R. 33.)

## ORDER LI.

## NOTICES AND PAPER, &amp;C.

1. All notices required by these Rules shall be in manuscript or print, or partly in manuscript and partly in print, unless expressly authorized by a Court or Judge to be given orally. (Comp. R. Sup. C., Order 56, R. 1.) 450  
Notices to be written or printed.
2. Proceedings, if printed, shall be printed with pica type, leaded, on good paper, of foolscap size. (Comp. *Ib.*, R. 2; G. O. Chy., No. 67.) 451  
Regulations as to printing proceedings.
3. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript. (R. Sup. C., Order 56, R. 3.) 452  
Affidavits.

## ORDER LII.

## TIME.

1. Where by these Rules, or by any judgment or order given or made after the commencement of the Act, time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months. (R. Sup. C., Order 57, R. 1.) 453  
Months shall mean calendar months.
2. Where any limited time less than 6 days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, holidays, as defined by the Interpretation Act, shall not be reckoned in the computation of such limited time. (*Ib.*, R. 2; R. S. O., c. 1, s. 8, sub-s. 16; Reg. Gen., T. T. 1856, No. 146, Ont.) 454  
Period of less than 6 days.
3. In all cases in which any particular number of days not expressed to be clear days, is prescribed by the Act or the Orders or practice of the Court, the same shall be reckoned exclusively of the first day, and inclusively of the last day. (English Rule, No. 174 of Hilary Term, 1853.) 455  
Days, how computed.
4. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open. (*Ib.*, R. 3.) 456  
Where last day is Sunday
5. The time for delivering or amending any pleading may be enlarged by consent in writing, without application to the Court or a Judge. (R. Sup. C., April, 1880, R. 42.) 457  
Enlargement of time by consent.
6. Service of pleadings, notices, summonses, orders, rules and other proceedings shall be effected before the hour of 6 in the afternoon, except on Saturdays, when it shall be effected before the hour of 2 in the afternoon. Service effected after 6 in the afternoon on any week day except Saturday shall be deemed to have been effected on the following day. Service effected after 2 in the afternoon on Saturday shall be deemed to have been effected on the following Monday. (R. Sup. C., April 1880, R. 43; Reg. Gen., T. T. 1856, No. 135, Ont.; G. O. Chy., Nos. 410, 411.) 458  
Service.
7. No pleadings shall be amended or delivered in the long vacation, except by consent or unless directed by the Court or a Judge. (R. Sup. C., Order 57, R. 4; R. S. O., c. 50, s. 95.) 459  
Pleading in vacation.

- 460 Long vacation excluded in time for pleading. 8. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, or in the times allowed for other purposes for which the same is not reckoned by the practice of the Courts consolidated by the Act, or any or either of them, or for the like proceedings substituted by the Act, or these Rules; unless otherwise directed by a Court or a Judge. (See R. Sup. C., Order 57, R. 5; G. O. Chy., No. 408; R. S. O., c. 50, s. 95.)
- 461 Enlargement or abridgment of time. 9. A Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. (R. Sup. C., Order 57, R. 6.)
- 462 Costs of application for extension of time. 10. The costs of an application to extend the time for taking any proceeding shall, in the absence of an order by the Court or a Judge directing by whom they are to be paid, be in the discretion of the taxing master. (R. Sup. C., April, 1880, R. 65.)

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### ORDER LIII.

#### AFFIDAVITS.

- 463 Form of affidavits. 1. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule. (R. Sup. C., April 1880, R. 12; Reg. Gen. T. T. 1856, No. 112, Ont.; G. O. Chy., Nos. 68, 258.)
- 464 Description and address of deponent to be stated. 2. Every affidavit shall state the description and true place of abode of the deponent, and shall be signed by him. (R. Sup. C., April 1880, R. 13; Reg. Gen., T. T. 1856, No. 109, Ont.)
- 465 Affidavits made by two or more deponents. 3. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents. (R. Sup. C., April, 1880, R. 14; Reg. Gen., T. T. 1856, No. 110, Ont.)
- 466 Affidavit to be filed. 4. There shall be appended to or indorsed upon every affidavit a note shewing on whose behalf it is filed. (Comp. R. Sup. C., April, 1880, R. 15.)
- 467 Alterations in affidavits. 5. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall without leave of the Court or a Judge be read or made use of in any matter pending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit; nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten, and signed or initialed in the margin of the affidavit by the officer taking it. (R. Sup. C., April, 1880, R. 16; Reg. Gen., T. T. 1856, No. 111, Ont.; G. O. Chy., No. 131.)

6. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent. (R. Sup. C., April 1880, R. 17; Reg. Gen., T. T. 1856, No. 113, Ont.)

468  
Affidavits by  
illiterate  
persons.

7. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used, be delivered to and left with the proper officer in Court or in Chambers. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed in the proper office, and the copy duly authenticated with the seal of that office. (R. Sup. C., April 1880, R. 18.)

469  
Stamps on  
affidavits.

Use of office  
copies.

## ORDER LIV.

### DIVISIONAL AND OTHER COURTS.

1. The following proceedings and matters shall be heard and determined before the Divisional Courts; but nothing herein contained shall be construed so as to take away or limit the power of a single Judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein, heretofore taken before a single Judge to be taken before a Divisional Court:

470

Proceedings to  
be taken be-  
fore Division-  
al Courts.

Appeals from orders of a Judge in Chambers.

Proceedings directed by any Statute to be taken before the Court, and in which the decision of the Court is final.

Cases of Habeas Corpus, in which a Judge directs that a rule nisi for the writ, or the writ, be made returnable before a Divisional Court.

Other cases where all parties agree that the same be heard before a Divisional Court.

Applications for new trials in the said Divisions where the action has been tried with a jury. (Comp. R. Sup. C., December, 1876, R. 8.)

2. Bills of exceptions and proceedings in error shall be abolished. (See R. Sup. C., Order 58, R. 1.)

471

Bill of  
exceptions and  
error  
abolished.

## ORDER LV.

### EFFECT OF NON-COMPLIANCE AND ERRORS.

1. Non-compliance with any of these Rules shall not render the proceedings in any action void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit. (R. Sup. C., Order 59.)

472

Non-compli-  
ance with  
Rules.

473  
Amendment  
of defects or  
errors.

2. The Court or a Judge may at any time, and on such terms as to costs or otherwise as to the Court or Judge may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the advancement of justice, determining the real question or issue raised by or depending on the proceedings, and best calculated to secure the giving of judgment according to the very right and justice of the case. (*See R. Sup. C., April, 1880, R. 44; R. S. O., c. 49, ss. 7, 8; c. 50, s. 270.*)

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## ORDER LVI.

### ACCOUNTANT'S OFFICE.

474  
Suitors' Ac-  
counts in Su-  
perior Courts  
consolidated.

1. The Suitors' Accounts in the Queen's Bench, Common Pleas, and Chancery, shall be consolidated, and shall be in charge of an officer to be called the Accountant of the Supreme Court.

475  
R. S. O. c. 50,  
s. 121, to apply  
to accounts.

2. Section 121 of the Common Law Procedure Act shall apply to the said accounts, and shall be read as if the words "Accountant of the Supreme Court" were substituted for the word "clerk" wherever the word "clerk" occurs in the said section.

476  
Payment out  
of Court.

3. Money is to be paid out of Court upon the cheque of the Accountant, countersigned by any of the following officers, viz.: one of the Clerks of the Crown and Pleas or the Registrar. (*R. S. O., c. 50, s. 121; G. O. Chy., No. 627.*)

477  
Cheques to be  
initialed by  
Clerk.

4. Every cheque is to be initialed by the chief Clerk in the Accountant's office before the same is presented for the signature of the Accountant or other officer. (*See G. O. Chy., Nos. 352, 372, 627.*)

478  
Registrar to  
act as Ac-  
countant.

5. The Registrar of the Court of Chancery shall act as, and shall be, Accountant of the Supreme Court until and unless some other person is appointed Accountant of the Supreme Court.

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## ORDER LVII.

### SITTINGS AND VACATIONS.

479  
Sittings of  
High Court

1. The sittings of the High Court of Justice shall be three in every year, viz., the Michaelmas sittings, the Hilary sittings, and the Easter sittings.

(a) The Michaelmas sittings shall begin on the third Monday in November, and end on the Saturday of the second week thereafter; the Hilary sittings shall begin on the first Monday in February and end on the Saturday of the following week; the Easter sittings shall begin on the third Monday in May and end on the Saturday of the second week thereafter. (*See R. S. O., c. 39, s. 11; R. Sup. C., Order 61, R. 1.*)

(b) In case it appears to the Judges of the said Court, or a majority of them, that the number of days so provided for holding any sittings is not required, or is insufficient, for the due despatch of the business to be transacted by the Court in such sittings, such Judges may from time to time, by rule or order, shorten the period for holding the sittings to such period, not less than two weeks, or increase the length of the same to any period, as the case may require. (*See R. S. O., c. 39, s. 12.*)

(c) The preceding provisions of this Order are not to apply to the Chancery Division except when the Judges thereof shall be of opinion that the business of the said Division is such as to render the said provisions necessary or convenient for the due despatch of business, and shall give notice to that effect.

(d) Divisional Courts of the High Court are to sit at such further or other times as may be directed by the High Court or as may be necessary for the due despatch of business.

2. One or more of the Judges of the High Court shall be selected at the commencement of each Long Vacation, for the hearing in Toronto during vacation of all such applications as may require to be immediately or promptly heard. Such Judge or Judges shall act as vacation Judge or Judges for one year from appointment. In the absence of arrangement between the Judges, the vacation Judge or Judges shall be the Judge or Judges last appointed (whether as Judge or Judges of the said High Court or of any Court whose jurisdiction is by the Act vested in the said High Court) who have not already served as vacation Judges of any such Court; and if there shall not be any Judge or Judges for the time being of the said High Court who shall not have so served, then the vacation Judge or Judges shall be the Judge or Judges (if any) who has or have not so served and the senior Judge or Judges who has or have so served once only according to seniority of appointment whether in the said High Court or such other Court as aforesaid. (Comp. R. Sup. C., Feb., 1876, R. 9.)

480  
Vacation  
Judges.

3. The vacation Judges may sit either separately, or together as a Divisional Court, as occasion shall require, and may hear and dispose of all actions, matters, and other business to which ever Division the same may be assigned. No order made by a vacation Judge shall be reversed or varied except by a Divisional Court or the Court of Appeal, or the Judge who made the order. Any other Judge of the High Court may sit in vacation for any vacation Judge. (R. Sup. C., Order 61, R. 6.)

481  
Jurisdiction of  
vacation  
Judges.

4. The vacation Judges of the High Court may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any Division of the High Court to which such business may be assigned, although such interval may not be called or known as a vacation. (*Ib.*, R. 7.)

482  
Power of va-  
cation Judges  
during inter-  
vals between  
sittings.

ORDER LVIII.

EXCEPTIONS FROM THE RULES.

Nothing in these Rules shall be construed as intended to affect the practice or procedure in criminal proceedings, or proceedings on the Crown or Revenue side of the Queen's Bench or Common Pleas Divisions. (*See* R. Sup. C., Order 62; R. S. O., c. 39, s. 4.)

483  
Certain mat-  
ters not affect-  
ed.

ORDER LIX.

FORMS.

The forms contained in the Appendices hereto are to be used with such variations or modifications as circumstances may require. (*See* R. Sup. C., April, 1880, R. 52.)

484  
Forms to be  
used.

## ORDER LX.

## COUNTY COURTS.

- 485  
Sittings of  
County Court. ¶ 1. The County Court terms are abolished. There shall be sittings of the said Court at and for the same periods as the said terms. ¶
- 486  
Time sittings  
to commence. ¶ 2. The sittings of the County Courts now required to be held on the first Monday in April and October in each year, for disposing of cases without the intervention of a jury, shall after the passing of this Act commence on the first Tuesday instead of the first Monday in each of the said months. (R. S. O., c. 43, s. 14.) ¶
- 487  
Judges may  
sit at any  
time. ¶ 3. Subject to Rules of Court, the Judges of the County Court shall also have power to sit and act at any time for the transaction of any part of the business of such courts, or for the discharge of any duty which by any statute or otherwise is required to be discharged out of or during term. ¶
- 488  
Costs where  
action fails  
for want of  
jurisdiction. ¶ 4. In all actions, suits or other proceedings brought in any County or Division Court in Ontario, in which the plaintiff fails to recover judgment by reason of such Court having no jurisdiction over the subject matter thereof, the said County Court, or the Judge presiding in the said Division Court, as the case may be, shall have jurisdiction over the costs of such action, suit or other proceeding, and may order by and to whom the same shall be paid, and the recovery of the costs so ordered to be paid may be enforced by the same remedies as the costs in actions, suits or proceedings within the proper competence of the said Courts respectively are recoverable. ¶
- 489  
Procedure  
in County  
Courts. ¶ 5. Subject to the provisions of this Act, and to Rules of Court, the pleadings, practice and procedure for the time being of the High Court of Justice shall apply and extend to the County Courts, wherever the present pleadings, practice and procedure of the County Courts correspond with those of the Superior Courts of Law. ¶

## ORDER LXI.

## INTERPRETATION.

- 490  
"Judge"  
meaning of. 1. A "Judge" in the preceding Orders means a Judge of the Supreme Court, or a Judge having the authority for the time being of a Judge of the High Court, unless there is something in the context indicating a different meaning.
- 491  
Citation of  
Rules. ¶ 2. Any Rule of the several Orders in this schedule may be cited by the marginal number of the Rule, or by the number of the Order, and of the Rule as it stands in such Order. ¶

## ORDER LXII.

## PENDING BUSINESS.

- 492  
In Queen's  
Bench and  
Common 1. With respect to pending business in the Queen's Bench and Common Pleas Divisions, the procedure is to be as follows:—

(1) Where no declaration has been delivered, the action shall be continued according to the ordinary course of the High Court of Justice, as if it had been commenced in that Court. (2) In all other cases the action shall be continued up to the close of the pleadings according to the practice of the Court in which it was brought, and afterwards according to the provisions of the Act; subject, however, to an order, at the instance of either party, to proceed at any stage according to the provisions of the Act. (*See Notice of Nov. 2, 1875, W. N. 1875, Pt. II., p. 469.*)

Pleas  
Divisions.

2. With respect to pending business in the Court of Chancery, subject to any special order which may be made in any cause, matter or proceeding pending at the commencement of the Act, the procedure is to be as follows:—All causes, matters, and proceedings, except causes in which neither notice of motion for a decree has been served, nor replication been filed, before the said time shall, so far as relates to the form and manner of procedure, be continued and concluded in the same manner as they would have been in the Court of Chancery. (*See Notice of Nov. 3, 1875, W. N. 1875, Pt. II., p. 468.*)

493  
In Chancery  
Division.

(a) All such pending causes in which, up to the commencement of the Act, no notice of motion for a decree has been served or replication filed, shall be continued in the same manner as they would have been continued in the Court of Chancery up to the time at which such notice of motion or replication could have been served or filed, and shall from that period be continued according to the ordinary course of the High Court of Justice. (*See Ib.*)

(b) Any party to a pending cause may apply in chambers that, for special reasons, a direction may be given for continuing such cause according to the ordinary course of the High Court of Justice. (*See Ib.*)



## APPENDICES TO THE FOREGOING RULES.

## APPENDIX (A).

## PART I.

FORMS OF WRITS OF SUMMONS, AND NOTICE IN LIEU  
OF SUMMONS.

## No. 1.

(See Act of 1875, Appendix A, Pt. I., No. 1.; R. Sup. C., April, 1880,  
Schedule, Form A, 1a.)

*General Form of Writ of Summons.*

In the High Court of Justice.  
— Division.

Between *A.B.* Plaintiff,  
and  
*C.D.* and *E.F.* Defendants.

VICTORIA, by the Grace of God, &c.

To *C.D.* of in the county of and *E.F.* of

We command you, That within 10 days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of *A.B.*; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, the Honourable President, &c.

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within 12 calendar months from the date thereof, or if renewed, within 12 calendar months from the date of such renewal, including the day of such date, and not afterwards.

The defendant [or defendants] may appear hereto by entering an appearance [or appearances] either personally or by solicitor at the [ ] office at

*Indorsements to be made on the writ.*

The plaintiff's claim is for, &c.

Where the writ is to be specially indorsed add:—The following are the particulars:—(Giving them. See Part II. post.)

This writ was issued by *E.F.*, of solicitor for the said plaintiff, who resides at , or, this writ was issued by the plaintiff in person who resides at [mention the city, town, or township, and also the name of the street and number of the house of the plaintiff's residence, if any, or in case of a township, the number of the lot and concession.]

*Indorsement to be made on the writ after service thereof.*

This writ was served by *X.Y.* on *C.D.* [the defendant or one of the defendants], on Monday, the day of , 18  
(Signed) *X.Y.*

**No. 2.**

(See Act of 1875, Appendix A, Pt. I., No. 2; R. Sup. C., June, 1876, R. 2; R. Sup. C., April, 1880, Schedule, Form A, 2a.)

*Writ for service out of Ontario or where notice in lieu of service is to be given out of Ontario.*

In the High Court of Justice. Between A.B., Plaintiff,  
and  
C.D. and E.F. Defendants.  
 \_\_\_\_\_Division.

VICTORIA, by the grace of God, &c.

To C. D., of

We command you C. D., that within [*here insert the number of days directed by Order II., or as the case may be*] after the service, on you, of this writ and of the plaintiff's statement of claim delivered herewith, [*or notice of this writ as the case may be*], inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of A.B., and your defence thereto, if any, to be delivered; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, the Honourable President, &c.

Memorandum and indorsements as in Form No. 1,

*Indorsement to be made on the writ.*

N.B.--This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of Ontario. When the defendant to be served is not a British subject, and is not in British dominions notice of the writ, and not the writ itself, is to be served upon him.

*Indorsement to be made on the writ after service thereof:*

This notice was served by X.Y., on G. H., (the defendant or one of the defendants) on the day of 18  
 Indorsed the day of 18

(Signed)  
 (Address)

**No. 3.**

(See Act of 1875, Appendix A, Pt. 1, No. 3; R. Sup. C., June, 1876, R. 2; R. Sup. C., April, 1880, Schedule, Form A, 3a.)

*Notice of writ, in lieu of service, to be given out of Ontario.*

In the High Court of Justice. Between A.B. Plaintiff,  
and  
C.D., E.F., and G.H., Defendants.  
 \_\_\_\_\_Division.

To G.H., of

Take notice that A.B., of \_\_\_\_\_ has commenced an action against you, G.H., in the \_\_\_\_\_ Division of Her Majesty's High Court of Justice in Ontario, by writ of that Court, dated the day of \_\_\_\_\_, A.D. 18 \_\_\_\_\_; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within [ \_\_\_\_\_ ] days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action, and your defence thereto, if any, to be delivered; and in default of your so doing, the said A.B., may proceed therein, and judgment may be given, in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the [ \_\_\_\_\_ ] office at

Dated, &c.

(Signed) A.B., of \_\_\_\_\_ &c.  
or  
 X.Y., of \_\_\_\_\_ &c.  
Solicitor for A.B.

N.B.—This notice is to be used when the person to be served is not a British subject, and is not in British dominions.

*Indorsement to be made on the writ after service thereof:*

This notice was served by X.Y., on G.H., (the defendant or one of the defendants) on the day of 18  
 Indorsed the day of 18

(Signed)  
 (Address)

## PART II.

## INDORSEMENTS ON WRITS OF SUMMONS.

No. 4.

## SECTION I.

(See R. Sup. C., Appx. A., Pt. II., Section 2.)

*Money Claims where no Special Indorsement under Order III., Rule 4.*

The plaintiff's claim is \$	for the price of goods sold.	Goods sold.
<i>This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.</i>		
The plaintiff's claim is \$	for money lent [and interest].	Money lent.
The plaintiff's claim is \$	whereof \$ is for the price of goods	Several de-
sold, and \$ for money lent, and \$ for interest.		mands.
The plaintiff's claim is \$	for arrears of rent.	Rent.
The plaintiff's claim is \$	for arrears of salary as a clerk [or as the	Salary, &c.
<i>case may be].</i>		
The plaintiff's claim is \$	for interest upon money lent.	Interest.
The plaintiff's claim is \$	for a general average contribution.	General average.
The plaintiff's claim is \$	for freight and demurrage.	Freight, &c.
The plaintiff's claim is \$	for lighterage.	
The plaintiff's claim is \$	for market tolls and stallage.	Tolls.
The plaintiff's claim is \$	for penalties under the Statute	Vic- Penalties.
toria, chap. [ . . . ]		
The plaintiff's claim is \$	for money deposited with the defendant	Banker's balance.
as a banker.		
The plaintiff's claim is \$	for fees for work done [and \$ money	Fees, &c., as solicitors.
expended] as a solicitor.		
The plaintiff's claim is \$	for commission as [state character as	Commission.
<i>auctioneer, broker, &amp;c.]</i>		
The plaintiff's claim is \$	for medical attendance.	Medical attendance, &c.
The plaintiff's claim is \$	for a return of premiums paid upon	Return of premium.
policies of insurance.		
The plaintiff's claim is \$	for the warehousing of goods.	Warehouse rent.
The plaintiff's claim is \$	for the carriage of goods by railway.	Carriage of goods.
The plaintiff's claim is \$	for the use and occupation of a house.	Use and occupation of house.
The plaintiff's claim is \$	for the hire of [furniture].	Hire of goods
The plaintiff's claim is \$	for work done as surveyor.	Work done.
The plaintiff's claim is \$	for board and lodging.	Board and lodging.
The plaintiff's claim is \$	for the board, lodging and tuition of	Schooling.
X. Y.		
The plaintiff's claim is \$	for money received by the defendant as	Money received.
solicitor [or factor, or collector, or, &c.] of the plaintiff.		
The plaintiff's claim is \$	for fees received by the defendant under	Fees of office
colour of the office of		
The plaintiff's claim is \$	for a return of money overcharged for	Money over paid.
the carriage of goods by railway.		
The plaintiff's claim is \$	for a return of fees overcharged by the	
defendant as		
The plaintiff's claim is \$	for a return of money deposited with	Return of money by stakeholder
the defendant as stakeholder.		
The plaintiff's claim is \$	for money entrusted to the defendant	Money won from stakeholder.
as stakeholder, and become payable to plaintiff.		
The plaintiff's claim is \$	for a return of money entrusted to the	Money entrusted to agent.
defendant as agent to the plaintiff.		
The plaintiff's claim is \$	for a return of money obtained from the	Money obtained by fraud.
plaintiff by fraud.		

Money paid by mistake.	The plaintiff's claim is \$	for a return of money paid to the de-
Money paid for consideration which has failed.	fendant by mistake. The plaintiff's claim is \$	for a return of money paid to the de-
	fendant for [work to be done, left undone ; or a bill to be taken up, not taken up &c..]	
	The plaintiff's claim is \$	for a return of money paid as a deposit
Money paid by surety for defendant.	upon shares to be allotted. The plaintiff's claim is \$	for money paid for the defendant as his
Rent paid.	surety. The plaintiff's claim is \$	for money paid for rent due by the de-
	fendant.	
Money paid on accommodation bill.	The plaintiff's claim is \$	upon a bill of exchange accepted [or
Contribution by surety.	indorsed] for the defendant's accommodation.	
By co-debtor	The plaintiff's claim is \$	for a contribution in respect of money
	paid by the plaintiff as surety.	
Money paid for calls.	The plaintiff's claim is \$	for a contribution in respect of a joint
	The plaintiff's claim is \$	debt of the plaintiff and the defendant, paid by the plaintiff.
	The plaintiff's claim is \$	for money paid for calls upon shares,
	against which the defendant was bound to indemnify the plaintiff.	
Money payable under award.	The plaintiff's claim is \$	for money payable under an award.
Life policy.	The plaintiff's claim is \$	upon a policy of insurance upon the life
	of X. Y., deceased.	
Money bond	The plaintiff's claim is \$	upon a bond to secure payment of
	\$1,000, and interest.	
Foreign judgment.	The plaintiff's claim is \$	upon a judgment of the Court,
Bill of exchange, &c.	in the Province of Quebec. The plaintiff's claim is \$	upon a cheque drawn by the defendant.
	The plaintiff's claim is \$	upon a bill of exchange accepted [or
	drawn or indorsed] by the defendant.	
	The plaintiff's claim is \$	upon a promissory note made [or in-
	dorsed] by the defendant.	
	The plaintiff's claim is \$	against the defendant A.B. as acceptor,
	and against the defendant C.D. as drawer [or indorser] of a bill of exchange.	
Surety.	The plaintiff's claim is \$	against the defendant as surety for the
	price of goods sold.	
	The plaintiff's claim is \$	against the defendant A.B. as principal,
	and against the defendant C.D. as surety for the price of goods sold [or	
	arrears of rent, or for money lent, or for money received by the defend-	
	ant A.B., as traveller for the plaintiffs, or, &c.]	
Del credere agent.	The plaintiff's claim is \$	against the defendant as a del credere
Calls.	agent for the price of goods sold [or as losses under a policy].	
	The plaintiff's claim is \$	for calls upon shares.

No. 5.

SECTION II.

(See R. Sup. C., Appx. A, Pt. II., Section 3 ; R. S. O., c. 50, s. 18.)  
*Indorsement for Costs, &c.*

[Add to the above Forms] and \$ for costs ; and if the amount claimed be paid to the plaintiff or his solicitor within 8 days [or if the writ is to be served out of Ontario, or notice in lieu of service allowed, insert the time limited for appearance and defence] from the service hereof, further proceedings will be stayed.

No. 6.

SECTION III.

(See R. Sup. C., Appx. A, Pt. II., Section 4.)

*Indorsements on Writs for Damages and other Claims.*

Agent, &c The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and \$ for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [or, &c.] of the plaintiff [and \$ for money received as factor, &c.]

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [or plaintiff].

The plaintiff's claim is for damages for non-compliance with the award Arbitration of X. Y.

The plaintiff's claim is for damages for assault [and false imprison- Assault, &c. ment, and for malicious prosecution].

The plaintiff's claim is for damages for assault and false imprisonment By husband of the plaintiff C. D. and wife.

The plaintiff's claim is for damages for assault by the defendant C. D.

The plaintiff's claim is for damages for injury by the defendant's negli- Solicitor. gence as solicitor of the plaintiff.

The plaintiff's claim is for damages for negligence in the custody of Bailment. goods [and for wrongfully detaining the same].

The plaintiff's claim is for damages for negligence in the keeping of Pledge. goods pawned [and for wrongfully detaining the same].

The plaintiff's claim is for damages for negligence in the custody of Hire. furniture lent on hire [or a carriage lent], [and for wrongfully, &c.]

The plaintiff's claim is for damages for wrongfully neglecting [or Banker. refusing] to pay the plaintiff's cheque.

The plaintiff's claim is for damages for breach of a contract to accept Bill. the plaintiff's drafts.

The plaintiff's claim is upon a bond conditioned not to carry on the Bond. trade of a

The plaintiff's claim is for damages for refusing to carry the plaintiff's Carrier. goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship Charter- party. [Mary].

The plaintiff's claim is for wrongfully depriving plaintiff of goods, house- Damages for hold furniture, &c. depriving of goods.

The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained.

The plaintiff's claim is for damages for improperly distraining. Distress. Replevin. Wrongful

[This form shall be sufficient whether the distress complained of be distress. wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value].

The plaintiff's claim is for damages for infringement of the plaintiff's Fishery. right of fishing.

The plaintiff's claim is for damages for fraudulent misrepresentation on Fraud. the sale of a horse [or a business, or shares, or, &c.].

The plaintiff's claim is for damages for fraudulent misrepresentation of Guarantee. the credit of A.B.

The plaintiff's claim is for damages for breach of a contract of guarantee for A.B.

The plaintiff's claim is for damages for breach of a contract to indem- nify the plaintiff as the defendant's agent to distrain.

The plaintiff's claim is for a loss under a policy upon the ship "Royal Insurance. Charter," and freight or cargo [or for return of premiums].

[This Form shall be sufficient whether the loss claimed be total or partial].

The plaintiff's claim is for a loss under a policy of fire insurance upon Fire insur- house and furniture. ance.

The plaintiff's claim is for damages for breach of a contract to insure a house.

The plaintiff's claim is for damages for breach of contract to keep a Landlord and house in repair. tenant.

- The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.
- Medical man.** The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.
- Mischiefous animal.** The plaintiff's claim is for damages for injury by the defendant's dog.
- Negligence.** The plaintiff's claim is for damages for injury to the plaintiff [*or, if by husband and wife, to the plaintiff C.D.*] by the negligent driving of the defendant or his servants.
- The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.
- The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.
- Lord Campbell's Act.** The plaintiff's claim is as executor of *A.B.* deceased, for damages for the death of the said *A.B.*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.
- Promise of marriage.** The plaintiff's claim is for damages for breach of promise of marriage.
- Seduction.** The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.
- Sale of goods.** The plaintiff's claim is for damages for breach of contract to accept and pay for goods.
- The plaintiff's claim is for damages for non-delivery [*or short delivery or defective quality, or other breach of contract of sale*] of cotton [*or, &c.*]
- Sale of land.** The plaintiff's claim is for damages for breach of warranty of a horse.
- The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] land.
- The plaintiff's claim is for damages for breach of contract to let [*or take*] a house.
- The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] the lease, with goodwill, fixtures, and stock-in-trade of a public-house.
- The plaintiff's claim is for damages for breach of covenant for title [*or for quiet enjoyment, or, &c.*] in a conveyance of land.
- Trespass to land.** The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river*].
- Support.** The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or house or mine*].
- Way.** The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or private way*].
- Watercourse, &c.** The plaintiff's claim is for damages for wrongfully diverting [*or obstructing, or polluting, or diverting water from*] a watercourse.
- The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or into the plaintiff's mine*].
- The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.
- Pasture.** The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.  
[*This form shall be sufficient whatever the nature of the right to pasture be.*]
- Light.** The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.
- Patent.** The plaintiff's claim is for damages for the infringement of the plaintiff's patent.
- Copyright.** The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.
- Trade mark.** The plaintiff's claim is for damages for wrongfully using [*or imitating*] the plaintiff's trade mark.
- Work.** The plaintiff's claim is for damages for breach of a contract to build a ship [*or to repair a house, &c.*]
- The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.
- Nuisance.** The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or, &c.*]
- The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or, &c.*]

The plaintiff's claim is for damages for loss of the plaintiff's goods in Innkeeper. the defendant's inn.

The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same.

Claim for return of goods; damages. Ejectment.

The plaintiff's claim is to recover possession of a house, No. in street, in the City of Ottawa; or of the N.E.  $\frac{1}{4}$  of lot 2, in the 3rd concession of the Township of in the county of

The plaintiff's claim is to establish his title to [here describe property], and to recover the rents thereof.

To establish title and recover rents.

[The two previous forms may be combined.]

The plaintiff's claim is for dower out of lot number (or describing the property otherwise with reasonable certainty). And take notice that the plaintiff claims damages for the detention of her dower from the day of (See R. S. O., c. 55, ss. 7, 10.)

Dower.

Add to indorsement if a mandamus is claimed:

And for a mandamus:

Mandamus.

Add to indorsement if an injunction is claimed.

And for an injunction.

Injunction.

Add to Indorsement where Claim is to land, or to establish title, or both:

And for mesne profits.

Mesne profits

And for an account of rents or arrears of rent.

Arrears of rent.

And for breach of covenant for [repairs].

Breach of covenant.

No. 7.

SECTION IV.

(See R. Sup. C., Appx. A., Pt. II., Section 7.)

Money Claims—Special Indorsements under Order III, Rule 4.

1. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

1879—31st December.—	
Balance of account for butcher's meat to this date . . . . .	\$142
1880—1st January to 31st of March.—	
Butcher's meat supplied . . . . .	297
	<hr/>
	\$439
1880—1st February.—Paid . . . . .	180
	<hr/>
Balance due . . . . .	\$259

2. The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as surety, for the price of goods sold to A.B. The following are the particulars:—

1881—2nd February. Guarantee by C.D. of the price of woollen goods to be supplied to A.B.	
2nd February—To goods . . . . .	\$225
3rd March—To goods . . . . .	151
17th March—To Goods . . . . .	27
5th April—To Goods . . . . .	65
	<hr/>
	\$468

3. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Promissory note for \$1,000, dated 1st January 1879, made by defendant, payable 4 months after date.	
Principal . . . . .	\$1,000
Interest . . . . .	

4. The plaintiff's claim is against the defendant A.B. as acceptor, and against the defendant C.D. as drawer, of a bill of exchange. The following are the particulars:—

Bill of exchange for \$2,000, dated 1st January, 1880, drawn by defendant C.D. upon and accepted by defendant A.B., payable 3 months after date.	
Principal . . . . .	\$2,000
Interest . . . . .	

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars:—

Bond dated 1st January, 1879. Condition for payment of \$500 on the 26th December, 1879.

Principal due . . . . .	\$500
Interest . . . . .	

6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—

Deed dated . . . . . covenant to pay \$3,000 and interest.

Principal due . . . . .	\$800
Interest . . . . .	

No. 8. SECTION V.

(See R. Sup. C., Appx. A., Pt. II., Sec. 8.)

*Indorsements of Character of Parties.*

- Executor. The plaintiff's claim is as executor [or administrator] of *C. D.*, deceased, for, &c.  
The plaintiff's claim is against the defendant *A. B.*, as executor [or, &c.] of *C. D.*, deceased, for, &c.  
The plaintiff's claim is against the defendant *A. B.*, as executor of *X. Y.*, deceased, and against the defendant *C. D.*, in his personal capacity, for, &c.
- Against executrix. The claim of the plaintiff is against the defendant as executrix of *C. D.*, deceased, for
- Assignee in insolvency. The plaintiff's claim is as assignee in insolvency of *A. B.*, for  
The plaintiff's claim is against the defendant as assignee in insolvency of *A. B.*, for
- Trustees. The plaintiff's claim is as [or the plaintiff's claim is against the defendant as] trustee under the will of *A. B.* [or under the settlement upon the marriage of *A. B.* and *X. Y.*, his wife].
- Heir and devisee. The plaintiff's claim is against the defendant as heir-at-law of *A. B.*, deceased.
- Qui tam action. The plaintiff's claim is against the defendant *C. D.*, as heir-at-law, and against the defendant *E. F.*, as devisee of lands under the will of *A. B.*  
The plaintiff's claim is as well for the Queen as for himself, for

No 9. SECTION VI.

*Indorsements in Matters which formerly belonged to the exclusive jurisdiction of equity.*

(a) *Creditor to administer Estate.*

(See R. Sup. C., Appx. A., Pt. II., Section 2, No. 1.)

The plaintiff's claim is as a creditor of *X. Y.*, of deceased, to have the [real and] personal estate of the said *X. Y.*, administered. The defendant *C. D.* is sued as the administrator of the said *X. Y.* [and the defendants *E. F.* and *G. H.* as his co-heirs-at-law].

(b) *Legatee to administer Estate.*

(See *Ib.*, No. 2.)

The plaintiff's claim is as a legatee under the will dated the day of 18 , of *X. Y.* deceased, to have the [real and] personal estate of the said *X. Y.* administered. The defendant *C. D.* is sued as the executor of the said *X. Y.* [and the defendants *E. F.* and *G. H.* as his devisees].

(c) *Partnership account.*(See *Ib.*, No. 3.)

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the \_\_\_\_\_ day of \_\_\_\_\_], and to have the affairs of the partnership wound up.

(d) *By Mortgagee for sale and for immediate payment and possession.*(See *Ib.*, No. 4 ; G. O., Chy., Sch. S.)

The plaintiff's claim is on a mortgage dated the \_\_\_\_\_ day of \_\_\_\_\_ made between \_\_\_\_\_ [or by deposit of title deeds], and that the mortgage may be enforced by sale, and payment to the plaintiff by the defendant personally of any balance. (*If order for immediate payment is wanted add*), And take notice further that the plaintiff claims to be entitled forthwith to execution against the goods and lands of you (*naming the defendant against whom this order is claimed*) to recover payment of the amount due by you.

(*If order for immediate possession is wanted add*), And take notice further, that the plaintiff claims to be entitled to an order for the immediate delivery of the mortgaged premises to him.

(e) *By Mortgagee for foreclosure and for immediate payment and possession.*(See *Ib.*, No. 7 ; G. O., Chy., Sch. S.)

The plaintiff's claim is on a mortgage dated the \_\_\_\_\_ day of \_\_\_\_\_, made between \_\_\_\_\_ (or by deposit of title deeds), and that the mortgage may be enforced by foreclosure.

(*If order for immediate payment is wanted add*), And take notice further that the plaintiff claims to be entitled forthwith to execution against the goods and lands of you (*naming the defendant against whom this order is claimed*) to recover payment of the amount due by you.

(*If order for immediate possession is wanted add*), And take notice further that the plaintiff claims to be entitled to the immediate possession of the mortgaged premises.

(*At the end of the indorsement add*), If you desire a sale of the mortgaged premises instead of a foreclosure, and do not intend to defend the action, you must within the time allowed for appearance, file in the office within named, a notice in writing, signed by yourself or your solicitor, to the following effect:—"I desire a sale of the mortgaged premises in the plaintiff's writ of summons mentioned, or a competent part thereof, instead of a foreclosure," and you must deposit the sum of \$80 to meet the expenses of such sale.

(f) *By Mortgagor for Redemption.*(See *Ib.*, No. 5.)

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated \_\_\_\_\_ and made between [parties], and to redeem the property comprised therein.

(g) *Raising Portions.*(See *Ib.*, No. 6.)

The plaintiff's claim is that the sum of \$ \_\_\_\_\_, which by an indenture of settlement dated \_\_\_\_\_, was provided for the portions of the younger children of \_\_\_\_\_ may be raised.

(h) *Execution of Trusts.*(See *Ib.*, No. 7.)

The plaintiff's claim is to have the trusts of an indenture dated \_\_\_\_\_ and made between \_\_\_\_\_, carried into execution.

(i) *Cancellation or Rectification.*(See *Ib.*, No. 8.)

The plaintiff's claim is to have a deed dated \_\_\_\_\_ and made between  
[parties], set aside or rectified,

(j) *Specific Performance.*(See *Ib.*, No. 9.)

The plaintiff's claim is for specific performance of an agreement dated  
the \_\_\_\_\_ day of \_\_\_\_\_, for the sale by the plaintiff to the defendant of  
certain [freehold] hereditaments at \_\_\_\_\_.

k) *Alimony.*(See *G. O. Chy.*, No. 488.)

The plaintiff's claim is for alimony ; and the plaintiff demands as interim  
alimony until the trial of the action the monthly (or weekly) sum of \$  
to be paid to her on the \_\_\_\_\_ day of each month (or week) at \_\_\_\_\_ and the  
interim costs to which she is entitled by the practice in that behalf.

~~THE~~ NOTE.—Where the plaintiff desires to register a certificate of *lis pendens*  
the indorsement on the writ of summons may contain such short description  
of the property as may be necessary or proper for that purpose. ~~THE~~

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## APPENDIX (B).

## NOTICES, &amp;c.

## No. 10.

(See R. Sup. C., April, 1880, Form B, 17.)

*Notice of Motion to Court.*

In the High Court of Justice.

— Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the Court will be moved on behalf of on day the day of 18 at o'clock in the forenoon, or so soon thereafter as counsel can be heard, that (*state the object of the intended application*).

Dated the day of 18 .

(Signed)  
Solicitor for the

To

## No. 11.

*Notice of Motion in Chambers.*

[Title, &amp;c.]

Take notice that a motion will be made on behalf of before the Master in Chambers (*or as the case may be*), at Osgoode Hall, in the City of Toronto, on day the day of 18, at o'clock in the noon, or so soon thereafter as the motion can be heard, for an order for time to, &c., For time.

or, that be at liberty to sign final judgment in this action for the amount indorsed on the writ with interest, if any, and costs; For final judgment under Order 10.

or, that the Plaintiff be at liberty to amend the writ of summons in this action by To amend writ.

or, that do furnish the said with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of the Supreme Court, Order 12, Rule 11. For particulars (Partner ship).

or, for an account in writing of the particulars of the Plaintiff's claim in this action (with dates and items, *or as the case may be*), and that unless such particulars be delivered in 4 days, all further proceedings be stayed until the delivery thereof; For particulars (Generally).

or, for an account in writing of the particulars of the injuries and expenses mentioned in the Statement of Claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered within days, all further proceedings be stayed until the delivery thereof; For particulars (accident).

or, that the order of in this action, dated the day of 18, be (discharged, or varied by, &c.), on the grounds disclosed in the affidavit of , filed in support of this application; To discharge or vary order

or, that this action be dismissed with costs to be taxed and paid to the Defendant by the Plaintiff for want of prosecution, the Plaintiff not having, &c.; To dismiss action.

- For discovery of documents. *or, that the documents are or have been in the matters in question in this action ;* answer within \_\_\_\_\_ days, stating what possession or power relating to \_\_\_\_\_
- To inspect documents. *or, that the or extracts from proceedings be stayed ;* be at liberty to inspect, and take copies of, \_\_\_\_\_, and that in the meantime all further \_\_\_\_\_
- To examine witness before trial. *or, that \_\_\_\_\_ a witness on behalf of the \_\_\_\_\_ be examined forthwith before \_\_\_\_\_ upon the usual terms ;*
- For Commission to examine witnesses. *or, that the \_\_\_\_\_ be at liberty to issue a commission for the examination of witnesses on \_\_\_\_\_ behalf at \_\_\_\_\_, and that the trial of this action be stayed until the return of such commission upon the usual terms ;*
- To refer under section 43 of the Act. *or, that the following question arising in this action, namely :— \_\_\_\_\_ be referred for inquiry and report to \_\_\_\_\_ under section 43 of the Judicature Act ;*
- To refer under section 44 of the Act. *or, that the \_\_\_\_\_ in this action be tried by \_\_\_\_\_ under section 44 of the Judicature Act ;*
- For compulsory reference to Master. *or, that (this action or the matters of account in this action or the following questions in this action being matters of account, namely, &c.) be referred to the certificate of one of the Masters of the Supreme Court of Judicature to award or certify ;*
- For examination of judgment debtor as to means. *or, that the above-named judgment debtor be orally examined as to whether any and what debts are owing to him, and do attend for that purpose before the Master in Chambers (or as the case may be) at such time and place as he may appoint, and that the said judgment debtor produce his books, &c., before the said Master at the time of the examination ;*
- For trial of action in County Court. *or, that this action be tried before the County Court of \_\_\_\_\_, holden on \_\_\_\_\_*
- For interpleader order (by sheriff). *or, that the plaintiff and the claimant appear and state the nature of their respective claims to the goods and chattels seized by the above-named sheriff under the writ of fieri facias issued in this action and maintain or relinquish the same and abide by such order as may be made herein, and that in the meantime all further proceedings be stayed.*

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No. 12.

(See G. O. Chy., No. 561.)

*Notice of application for Administration Order or respecting the guardianship of an infant.*

In the High Court,  
 \_\_\_\_\_ Division.

Between A.B., plaintiff,  
 and  
 C. D., defendant.

To Mr. C. D.

Take notice that an application will be made to \_\_\_\_\_, in Toronto, (or to \_\_\_\_\_ at his office in the city (or town) of, &c., as the case may be), on the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ o'clock in the forenoon, (or if opposed, then to a Judge in Chambers so soon thereafter as a Judge shall be sitting in Chambers, for an order for the administration of the estate, real and personal, of \_\_\_\_\_ by the Court, or for an order appointing \_\_\_\_\_ guardian of \_\_\_\_\_ an infant); and upon such application will be read the affidavits of this day filed.

Dated, &c.

X. Y., Solicitor for

## No. 13.

(See R. Sup. C., April, 1880.  
*Notice of Entry of Appearance.*

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that \_\_\_\_\_ have this day entered an appearance at \_\_\_\_\_ for the defendant \_\_\_\_\_ to the writ of summons in this action.

The said defendant require [or do not require] delivery of a statement of claim.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)

Solicitor for the defendant.

To

## No. 14.

(See *Ib.*, Appx. A., Part 1, No. 7.)

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between *A.B.*, plaintiff,

and

*C.D.*, and *E.F.*, defendants.

The defendant, *C.D.*, limits his defence to part only of the property mentioned in the writ in this action, that is to say, to the north-west quarter of the lot.

Yours, &c.,  
*G. H.*,

Solicitor for the said defendant *C.D.*

To

## No. 15.

*Notice disputing amount.*

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the defendant disputes the amount claimed by the plaintiff (or the defendant insists that the amount due to the plaintiff is \$ \_\_\_\_\_ only; or the defendant insists that the amount due to the plaintiff is \$ \_\_\_\_\_ for principal and \$ \_\_\_\_\_ for interest, since the \_\_\_\_\_ day of \_\_\_\_\_ &c., and no more, as the case may be.)

(Signed)

Solicitor for the defendant.

To

## No. 16.

(See *Ib.*, Form 3.)

*Notice in lieu of Statement of Claim.*

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between *A.B.*, plaintiff,

and

*C.D.*, defendant.

The particulars of the plaintiff's claim herein, and of the relief and remedy to which he claims to be entitled, appear by the indorsement upon the writ of summons.

Dated, &amp;c.

X. Y.,

Solicitor for Plaintiff.

No. 17.

(See R. Sup. C., Appx. (B) Form 2.)  
*Confession of Defence.*In the High Court,  
\_\_\_\_\_ Division.Between *A. B.*, plaintiff,  
and  
*C. D.*, defendant.

The plaintiff confesses the defence stated in the \_\_\_\_\_ paragraph of the defendant's statement of defence [or, of the defendant's further statement of defence].

Dated, &amp;c.

X. Y.,  
Solicitor for Plaintiff.

No. 18.

(See R. Sup. C., Appx. (B) Form 1. Act s. 18, sub-s. 4; Order 12, R. 19.)  
*Notice by Defendant to Third Party.*

Notice filed \_\_\_\_\_ day of \_\_\_\_\_

In the High Court,  
\_\_\_\_\_ Division.Between *A. B.*, plaintiff,  
and  
*C. D.*, defendant.

To Mr. X. Y.

Take notice that this action has been brought by the plaintiff against the defendant [as surety for *M. N.*, upon a bond conditioned for payment of \$10,000 and interest to the plaintiff.The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, or, also surety for the said *M. N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. )].

Or [as acceptor of a bill of exchange for \$2,500, dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D., drawn by you upon and accepted by the defendant and payable 3 months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C. D.*, you must cause an appearance to be entered for you within 8 days after service of this notice.In default of your so appearing, you will not be entitled in any future proceeding between the defendant *C. D.* and yourself to dispute the validity of the judgment in this action whether obtained by consent or otherwise.

Dated, &amp;c.

(Signed) *E. T.*

Or

X. Y.,

Solicitor for the defendant,  
*E. T.*

Appearance to be entered at \_\_\_\_\_

No. 19.

(See *Ib.*, Form 4.)*Indorsement on copy Defence and Counter-claim to be served on Third Party.*

" To the within named X. Y.

Take notice that if you do not appear to the within counter-claim of the within-named *C. D.*, within 8 days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Appearances are to be entered at \_\_\_\_\_

## No. 20.

*Indorsement on Order adding or changing parties under Order 44.*

Take notice, that if you desire to discharge this order you must apply to the Court for that purpose within 12 days after the service hereof upon you. The original statement of claim in this cause is filed in the office of the \_\_\_\_\_ at \_\_\_\_\_  
(and if the service is after a judgment directing a reference to a Master or other officer, add) and the reference under the judgment in this matter is being prosecuted in the office of the \_\_\_\_\_ at \_\_\_\_\_

## No. 21.

(See *Ib.*, Form 5.)

*Notice of payment into Court.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

*A. B. v. C. D.*

Take notice that the defendant has paid into Court \$ \_\_\_\_\_ and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim. for, &c.]

Dated, &c.

To Mr. X. Y.,  
the Plaintiff's Solicitor.

\_\_\_\_\_  
Z.,  
Defendant's Solicitor.

## No. 22.

(See *Ib.*, Form 6.)

*Acceptance of sum paid into Court.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

*A. B. v. C. D.*

Take notice that the plaintiff accepts the sum of \$ \_\_\_\_\_ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

Dated, &c.

X. Y.,  
Plaintiff's Solicitor.

To Z.,  
Defendant's Solicitor:

## No. 23.

(See *Ib.*, Form 10.)

*Notice to produce Documents.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

*A. B. v. C. D.*

Take notice that the [plaintiff or defendant], requires you to produce for his inspection the following documents referred to in your [statement of claim, or defence, or affidavit dated the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_].

Dated, &c.

[Describe documents required.]

X. Y.,  
Solicitor to the

To Z.,  
Solicitor for

No. 24.

(See R. Sup. C., April, 1880, Schedule, Form B, 10a.)

*Notice to Produce (General Form).*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that you are hereby required to produce and shew to the Court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly

Dated, &c.

To the above-named

h Solicitor or agent

} Solicitor for the above-named  
 \_\_\_\_\_

No. 25.

(See R. Sup. C., Appendix (B.) Form 11).

*Notice to inspect Documents.*

In the High Court of Justice.  
 \_\_\_\_\_ Division.

A. B. v. C. D.

Take notice that you can inspect the documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_ A.D. [except the deed numbered \_\_\_\_\_ in that notice] at my office on \_\_\_\_\_ day next the \_\_\_\_\_ instant, between the hours of 12 and 4 o'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of the documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_ A.D. on the ground that [state the ground] :—

Dated, &c.

X. Y.,  
 Solicitor for  
 \_\_\_\_\_

No. 26.

(See *Ib.*, Form 12.)

*Notice to admit Documents.*

In the High Court of Justice.  
 \_\_\_\_\_ Division.

A. B. v. C. D.

Take notice that the plaintiff [or defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his solicitor or agent at \_\_\_\_\_, on \_\_\_\_\_, between the hours of \_\_\_\_\_; and the defendant [or plaintiff] is hereby required, within 4 days from the said day, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies, and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

X. Y.,  
 Solicitor for

Dated, &c.,

To E. F., solicitor [or agent] for defendant [or plaintiff].  
 G. H., solicitor [or agent] for plaintiff [or defendant].

[Here describe the documents, the manner of doing which may be as follows:]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between A. B. and C. D. first part, and E. F. second part .....	January 1, 1878.
Indenture of lease from A. B. to C. D. ....	February 1, 1878.
Indenture of release between A. B., C. D., first part, &c. ....	February 2, 1878.
Letter—defendant to plaintiff .....	March 1, 1878.
Policy of Insurance on goods by ship "Isabella," on voyage from Toronto to Kingston .....	July 3, 1877.
Memorandum of agreement between C. D., captain of said ship, and E. F. ....	August 1, 1878.
Bill of exchange for \$500 at 3 months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H. ....	May 1, 1879.

COPIES.

Description of Documents.	Dates.	Original or duplicate served, sent, or delivered, when, how and by whom.
Register of baptism of A. B. in the parish of X .....	January 1, 1848.	Sent by General Post February 2, 1848.
Letter—plaintiff to defendant.	February 1, 1848.	
Notice to produce papers .....	March 1, 1878.	Served March 2, 1878 on defendant's attorney by E. F., of —
Record of a Judgment of the Court of Queen's Bench in an action, J. S. and J. N. ....	Trinity Term, 10th Vic.	

No. 27.

(See *Ib.* Form 14.)

Notice of Trial.

In the High Court of Justice.  
 \_\_\_\_\_ Division.

A. B. v. C. D.

Take notice of trial of this action [or the issues in this action ordered to be tried] at \_\_\_\_\_ for the \_\_\_\_\_ day of \_\_\_\_\_ next X. Y., plaintiff's solicitor [or as the case may be].

Dated, &c.

To Z., defendant's solicitor [or as the case may be].

No. 28.

(See *Ib.* Form B. 18.)

Notice of Entry of Demurrer for Argument.

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that \_\_\_\_\_ have this day entered for argument the demurrer of the \_\_\_\_\_ to the \_\_\_\_\_ in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)

of \_\_\_\_\_ Solicitor for the

To \_\_\_\_\_

No. 29.

(See *Ib.* Form B. 19.)

*Notice of Discontinuance.*

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the plaintiff hereby wholly discontinues this action, (or withdraws so much of his claim in this action as relates to, &c. (If not against all the defendants add), "As against the defendant," &c.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)

of  
 Solicitor for the plaintiff.

No. 30.

(See *Ib.*, Form B. 21).

*Notice of Cross-examination of Deponents at Trial on Affidavits.*

(See Order 35, R. 4.)

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the \_\_\_\_\_ intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

Solicitor for the

To

THE SCHEDULE above referred to.

Name of Deponent.	Address and Description.	Date when affidavit filed.

No. 31.

(See *Ib.*, Form B. 22.)

*Notice of Renewal of Writ of Execution.*

In the High Court of Justice.  
 \_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Take notice, that the writ of \_\_\_\_\_ issued in this action directed to the sheriff of \_\_\_\_\_ and bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 18 , has been renewed for one year from the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)

Solicitor for the

To the sheriff of

## APPENDIX (C).

## AFFIDAVITS.

## No. 32.

(See R. Sup. C., April, Form B. 24.)

*Affidavit of Service of Summons.*In the High Court of Justice.  
\_\_\_\_\_ Division.

Between

Plaintiff,

and

Defendant.

I, \_\_\_\_\_ of \_\_\_\_\_ solicitor for the above-named \_\_\_\_\_ make oath and say  
as follows :—

I did on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, before the hour of \_\_\_\_\_ in the  
noon, serve the above-named \_\_\_\_\_ in this action with a true  
copy of the summons hereto annexed marked A, by leaving it at the  
of the said \_\_\_\_\_ situate, &c., with there  
Sworn at this day of \_\_\_\_\_ 18 \_\_\_\_\_.

Before me, &amp;c.

This affidavit is filed on behalf of the  
\_\_\_\_\_

## No. 33.

*Affidavit by Landlord.*In the High Court,  
\_\_\_\_\_ Division.

Between A.B.,

Plaintiff,

and

C.D.,

Defendant.

I, \_\_\_\_\_ of \_\_\_\_\_ make oath and say  
as follows :—I am in possession of the land sought to be recovered in this action by  
myself (or by the said C.D., my tenant, (as the case may be).Sworn at this day of \_\_\_\_\_  
Before me, etc. ~~etc.~~

## No. 34.

(See *Ib.*, Form 9.)*Affidavit as to Documents.*In the High Court of Justice.  
\_\_\_\_\_ Division.

Between A.B., Plaintiff,

and

C.D., Defendant.

I, the above-named defendant C.D., make oath and say as follows :—

1. I have in my possession or power the documents relating to the  
matters in question in this action set forth in the first and second parts of  
the first schedule hereto.2. I object to produce the said documents set forth in the second part  
of the said first schedule hereto.3. That [here state upon what grounds the objection is made, and verify  
the facts as far as may be].4. I have had, but have not now, in my possession or power the docu-  
ments relating to the matters in question in this suit set forth in the  
second schedule hereto.5. The last-mentioned documents were last in my possession or power  
on [state when].6. That [here state what has become of the last-mentioned documents, and  
in whose possession they now are].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action or any of them, or wherein any entry has been made relative to such matters, or any of them other than and except the documents set forth in the said first and second schedules hereto, and the pleadings and other proceedings in the action.

### 35.

*Affidavit on Production when made by an officer of a Corporation.*

In the High Court.  
 ————Division.

Between *A. B.*, Plaintiff,  
 and  
*C. D.*, Defendant.

I, \_\_\_\_\_ of \_\_\_\_\_, make oath and say as follows:—

1. I am the (here state the name of the office held by the deponent in the service of the Company on whose behalf he makes the affidavit), and as such, have knowledge of all documents which are, or have been, in the custody or possession of the said (Company), relating to the matters in question in this action.
2. I am cognizant of the matters in question in this action.
3. The said defendants have in their possession or power, the documents relating to the matters in question in this action, set forth in the first and second parts of the first schedule hereto.
4. The said defendants object to produce the said documents set forth in the second part of the said first schedule hereto.
5. That (here state on what grounds the objection is made, and verify the facts as far as may be).
6. The said defendants have had, but have not now, in their possession or power, the documents relating to the matters in question in this action, set forth in the second schedule hereto.
7. The last mentioned documents were last in the possession or power of the said defendants on (state when).
8. That (here state what has become of the last mentioned documents, and in whose possession they now are).
9. According to the best of my knowledge, information, and belief, the said defendants have not now, and never had, in their possession, custody, or power, or in the possession, custody, or power of myself, or of any of its solicitors or agents, or of any person or persons whomsoever, on its behalf any (proceed as in last form).

### No. 36.

(See *Ib.*, Form B. 26.)

*Affidavit in support of Garnishee Order.*

In the High Court of Justice.  
 ————Division.

Between \_\_\_\_\_

and \_\_\_\_\_  
 Judgment Creditor,  
 and \_\_\_\_\_  
 Judgment Debtor.

I, \_\_\_\_\_ of \_\_\_\_\_ the above-named judgment creditor [or solicitor for the above-named judgment creditor] make oath and say as follows:—

1. By a judgment of the Court given in this action, and dated the day of \_\_\_\_\_ 18\_\_\_\_, it was adjudged that I [or the above-named judgment creditor] should recover against the above-named judgment debtor

the sum of \$ \_\_\_\_\_, and costs to be taxed, and the said costs were by a taxing officer's certificate dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, allowed at \$ \_\_\_\_\_.

2. The said \_\_\_\_\_ still remains unsatisfied to the extent of \_\_\_\_\_ and interest amounting to \$ \_\_\_\_\_.

3. \_\_\_\_\_ (*Name, address and description of garnishee*) is indebted to the judgment debtor \_\_\_\_\_ in the sum of \$ \_\_\_\_\_ or thereabouts.

4. The said (*insert name of garnishee*) is within the jurisdiction of this Court.

Sworn at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.  
Before me \_\_\_\_\_

This affidavit is filed on behalf of the \_\_\_\_\_

No. 37.

(*See Ib.*, Form B. 27.)

*Affidavit on Interpleader.*

In the High Court of Justice.

\_\_\_\_\_ Division.

Between \_\_\_\_\_

and \_\_\_\_\_

Plaintiff,

Defendant.

I, \_\_\_\_\_ of \_\_\_\_\_ the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and was served on me on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_. I have not yet delivered a statement of defence herein.

2. The action is brought to recover \_\_\_\_\_. The said \_\_\_\_\_ (is or are) in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed (*if claim in writing make the writing an exhibit*) by one \_\_\_\_\_ who (*state expectation of suit or that he has already sued*).

4. I do not in any manner collude with the said \_\_\_\_\_ or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said \_\_\_\_\_ in such manner as the Court may order or direct.

Sworn at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

Before me \_\_\_\_\_

This affidavit is filed on behalf of the \_\_\_\_\_





## No. 42.

In the High Court of Justice,  
Division.

In the matter of the estate of A. B. deceased.

Between E. F., Plaintiff,  
and  
G. H., Defendant.

*Statement of Defence.*

Defence.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some real estate which the defendant sold, and which produced the net sum of \$22,500, and the testator had some personal estate which the defendant got in and which produced the net sum of \$5,400.

2. The defendant applied the whole of the said sums and the sum of \$84 which the defendant received from rents of the real estate, in the payment of the funeral and testamentary expenses and debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the 10th of January, 1880, and offered the plaintiff free access to the vouchers, to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant admits the allegations in the 1st and 2nd paragraphs of the plaintiff's statement of claim.

5. The defendant submits that the plaintiff ought to pay the costs of this action.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

## No. 43.

(See *Ib.*, Form 5.)

Agent.

*Action against Del credere Agents.*

In the High Court of Justice,  
— — — Division.

Writ issued 28rd August, 18 \_\_\_\_

Between A. B. and Company, Plaintiffs,  
and  
E. F. and Company, Defendants.

*Statement of Claim.*

Claim.

1. The plaintiffs are manufacturers of artificial manures, carrying on business at \_\_\_\_\_, in the county of \_\_\_\_\_

2. The defendants are commission agents, carrying on business in Toronto.

3. In the early part of the year \_\_\_\_\_, the plaintiffs commenced, and down to the \_\_\_\_\_ 18 \_\_\_\_, continued to consign to the defendants, as their agents, large quantities of their manures for sale, and the defendants sold the same and received the price thereof and accounted to the plaintiffs therefor.

4. No express agreement has ever been entered into between the plaintiffs and the defendants with respect to the terms of the defendants' employment as agents. The defendants have always charged the plaintiffs a commission at \_\_\_\_\_ per cent. on all sales effected by them, which is the rate of commission ordinarily charged by all del credere agents in the said trade. And the defendants, in fact, always accounted to the plaintiffs for the price, whether they received the same from the purchasers or not.

5. The plaintiffs contend that the defendants are liable to them as del credere agents, but if not so liable are under the circumstances herein-after mentioned liable as ordinary agents.

6. On the \_\_\_\_\_, the plaintiffs consigned to the defendants for sale a large quantity of goods, including \_\_\_\_\_ tons of \_\_\_\_\_

7. On or about the \_\_\_\_\_, the defendants sold \_\_\_\_\_ tons of part of such goods to one G. H. for \$ \_\_\_\_\_, at 3 months' credit, and delivered the same to him.

8. G. H. was not, at that time, in good credit and was in insolvent circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.

9. G. H. did not pay for the said goods, but before the expiration of the said 3 months for which credit had been given, the estate of the said G. H. was placed in liquidation under the insolvency Acts then in force; and the plaintiffs have never received the said sum of \$ \_\_\_\_\_ or any part thereof.

The plaintiffs claim :

1. Damages to the amount of \$ \_\_\_\_\_
  2. Such further or other relief as the nature of the case may require.
- The plaintiffs propose that this action should be tried at Hamilton.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, by  
 X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 44. [Title as in claim, omitting date of issue of writ.]

*Statement of Defence.*

1. The defendants deny that the said commission of \_\_\_\_\_ per cent. mentioned in paragraph 4 of the claim is the rate of commission ordinarily charged by del credere agents in the said trade, and say that the same is the ordinary commission for agents other than del credere agents, and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers. Defence.

2. The defendants deny that they were ever liable to the plaintiffs as del credere agents.

3. With respect to the 8th paragraph of the plaintiffs' statement of claim, the defendants say that at the time of the said sale to the said G. H., the said G. H. was a person in good credit. If the truth is that the said G. H. was then in insolvent circumstances, the defendants did not suspect and had not reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

4. The defendants admit the allegations contained in paragraphs 1, 2, 3, 6, 7 and 9 of the plaintiffs' statement of claim.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, by  
 X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 45.

(See *Ib.*, Form 6.)

Bill of exchange.

In the High Court of Justice,  
 \_\_\_\_\_ Division.

Writ issued 23rd August, 18 \_\_\_\_\_  
 Between A. B. and C. D., Plaintiffs,  
 and  
 E. F. and G. H., Defendants.

*Statement of Claim.*

1. Messrs. M. N. & Co., on the \_\_\_\_\_ day of \_\_\_\_\_ drew a bill of exchange upon the defendants for \$ \_\_\_\_\_, payable to the order of the said Messrs. M. N. & Co. 3 months after date, and the defendants accepted the same. Claim.

2. Messrs. M. N. & Co. indorsed the bill to the plaintiffs.

[3. (Introduced by amendment to meet the defence in the defendant's statement of defence *infra*). The plaintiff gave value and consideration for the said bill in manner following, that is to say: on the

day 18 , the said Messrs. *M. N. & Co.* were indebted to the plaintiff in about \$ the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about \$ which last mentioned goods have since been delivered by him to them: And at the time of the order for such last mentioned goods it was agreed between Messrs. *M. N. & Co.* and the plaintiff, and the order was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon, together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities, including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiff.]

4. The bill became due on the , and the defendant has not paid it.

The plaintiffs claim :—(state claim)

The plaintiffs propose that this action should be tried at Kingston.

Delivered the day of 18 , by  
X. Y., of Plaintiffs' Solicitor.

[Title.]

No. 46. *Statement of Defence.*

Defence.

1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances hereinafter stated, and except as hereinafter mentioned there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. *M. N. & Co.*, the drawers thereof, and the defendants, that the said Messrs. *M. N. & Co.* should sell and deliver to the defendants free on board ship at the port of 1200 tons of coal during the month of , and that the defendants should pay for the same by accepting the said Messrs. *M. N. & Co.*'s draft for \$ at 6 months.

3. The said Messrs. *M. N. & Co.* accordingly drew upon the defendants, and the defendants accepted the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. *M. N. & Co.* of the said 1200 tons of coals under their said contract, and the time for delivery has long since elapsed; but the said Messrs. *M. N. & Co.* never delivered the same, or any part thereof, but have always refused to do so, whereby the consideration for the defendant's acceptance has wholly failed.

5. The plaintiffs first received the said bill, and it was first indorsed to them after it was overdue.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the 2nd, 3rd, and 4th paragraphs hereof.

Delivered the day of 18 by  
X. Y., of Defendants' Solicitor.

No. 47. (*Reply where plaintiff does not introduce into his statement of claim the allegations necessary by way of reply to the defence.*)

[Title.]

*Reply.*

1. The plaintiff joins issue upon the defendant's statement of defence.

2. The plaintiff gave value and consideration for the said bill in manner following, that is to say, on the day of 18 , the said Messrs. *M. N. & Co.* were indebted to the plaintiff in about \$ the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about \$ which last mentioned goods have since been delivered by him to them. At the time of the order for such last mentioned goods it was agreed between Messrs. *M. N. & Co.* and the plaintiff, and the order

was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon, together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiff

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ by  
 X. Y., of Plaintiff's Solicitor.

No. 48.

(See *Ib.*, Form 22.)

Promissory  
 Note.

In the High Court of Justice,  
 \_\_\_\_\_ Division.

Writ issued 3rd November, 18 \_\_\_\_

Between A. B., Plaintiff,  
 and  
 E. F., Defendant.

*Statement of Claim.*

1. The defendant on the \_\_\_\_\_ day of \_\_\_\_\_ made his promissory note, whereby he promised to pay to the plaintiff or Claim. his order \$ \_\_\_\_\_ 3 months after date.

2. The note became due on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_, and the defendant has not paid it.

The plaintiff claims :—

The amount of the note and interest thereon to judgment.

The plaintiff proposes that this action should be tried at Peterborough.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ by  
 X. Y., of Defendant's Solicitor.

No. 49.

[Title.]

*Statement of Defence.*

1. The defendant made the note sued upon under the following circum-  
 stances :—The plaintiff and defendant had for some years been in partner-  
 ship as coal merchants, and it had been agreed between them that they  
 should dissolve partnership, that the plaintiff should retire from the  
 business, that the defendant should take over the whole of the partnership  
 assets and liabilities, and should pay the plaintiff the value of his share in  
 the assets after deducting the liabilities. Defence.

2. The plaintiff thereupon undertook to examine the partnership books, and inquire into the state of the partnership assets and liabilities ; and he did accordingly examine the books, and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded \$10,000, and that the liabilities of the firm were under \$3,000, whereas the fact was that the assets of the firm were less than \$5,000, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the last paragraph induced the defendant to make the note now sued on, and there never was any other consideration for the making of the note.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ by  
 X. Y., of Defendant's Solicitor.

## No. 50.

Action on Bill  
of Exchange.

Statement of Claim.

In the High Court of Justice,  
— Division.

Writ issued 1st February, 18 .

Between A. B. Plaintiff,  
and  
C. D., Defendant.

Claim.

1. The plaintiff on the day of 188 , drew  
a bill of exchange upon the defendant for \$ payable 3 months  
after date, and the defendant accepted the same.2. The bill became due on day of 188 , and the  
defendant has not paid it.3. [*Amendment to meet defence infra.*] The defendant, who at the time  
of the acceptance of the said bill was an infant within the age of 21 years,  
ratified and confirmed the said acceptance after he attained full age and  
before action, by a writing made and signed by him.]The plaintiff claims :—(*State claim.*)

The plaintiff proposes that this action should be tried at Picton.

Delivered the day of 18 by  
X. Y., of Plaintiff's Solicitor.

## No. 51.

Statement of Defence.

[Title.]

At the time of making the alleged acceptance of the said bill the defend-  
ant was an infant within the age of 21 years.Delivered the day of 18 by  
X. Y., of Defendant's Solicitor.

## No. 52.

(*Reply where plaintiff does not introduce into his statement  
of claim the allegations necessary by way of reply to the  
defence.*)

[Title.]

Reply.

The defendant C. D., who at the time of the acceptance of the said bill  
was an infant within the age of 21 years, ratified and confirmed the said  
acceptance after he attained full age and before action, by a writing made  
and signed by him.Delivered the day of 18 , by  
X. Y., of Plaintiff's Solicitor.

## No. 53.

(*See Ib., Form 7.*)Bill of  
exchange and  
consideration.In the High Court of Justice,  
— Division.

Writ issued 3rd October, 18 ,

Between A. B. and C. D., Plaintiffs,  
and  
E. F. and G. H., Defendants.

Statement of Claim.

Claim.

1. The plaintiffs are merchants, factors, and commission  
agents, carrying on business in Toronto.

2. The defendants are merchants and commission agents, carrying on business at Montreal.

3. For several years prior to the \_\_\_\_\_, 18\_\_\_\_, the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents; and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

On the \_\_\_\_\_ of \_\_\_\_\_, the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of \$ \_\_\_\_\_ was accordingly due to the plaintiffs from the defendants.

4. On or about the \_\_\_\_\_, 18\_\_\_\_, the plaintiffs sent to the defendants a statement of the accounts between them, shewing the said sum as the balance due to the plaintiffs from the defendants; and the defendants agreed to the said statement of accounts as correct, and to the said sum of \$ \_\_\_\_\_ as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

5. The defendants requested the plaintiffs to give them 3 months' time for payment of the said sum of \$ \_\_\_\_\_, and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.

6. The plaintiffs thereupon on the \_\_\_\_\_ drew 2 bills of exchange upon the defendants, one for \$ \_\_\_\_\_, and the other for \$ \_\_\_\_\_, both payable to the order of the plaintiffs 3 months after date, and the defendants accepted the bills.

The said bills became due on the \_\_\_\_\_ 18\_\_\_\_, and the defendants have not paid the bills, or either of them, nor the said sum of \$ \_\_\_\_\_.

The plaintiffs claim:—

\$ \_\_\_\_\_ and interest to the date of judgment.

The plaintiffs propose that this action should be tried at Toronto.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_ by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 54.

(See *Ib.*, Form 13.)

False imprisonment.

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 3rd September, 18\_\_\_\_.

Between A. B., Plaintiff,  
and  
E. F., Defendant.

*Statement of Claim.*

1. The plaintiff is a journeyman painter. The defendant is a builder Claim. having his building yard, and carrying on business at Ottawa, and for 6 months before and up to the 22nd August, 18\_\_\_\_, the plaintiff was in the defendant's employment as a journeyman painter.

2. On the said 22nd August, 18\_\_\_\_, the plaintiff came to work as usual in the defendant's yard, at about 6 o'clock in the morning.

3. A few minutes after the plaintiff had so come to work the defendant's foreman, X. Y., who was then in the yard, called the plaintiff to him, and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X. Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.

4. The defendant was present at the time when the plaintiff was given into custody, and authorized and assented to his being given into custody; and in any case X. Y., in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.

5. The plaintiff upon being so given into custody, was taken by the said constable a considerable distance through various streets, on foot, to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

6. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for 3 months.

The plaintiff claims \$                      damages.

The plaintiff proposes that this action should be tried at Ottawa.

Delivered the                      day of                      18                      by  
X. Y., of                      Plaintiff's Solicitor.

[Title.]

*Statement of Defence.*

**No. 55.**

**Defence.**

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorized or assented to his being given into custody. And the said X. Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business.

2. At some time about 5 or 6 o'clock on the                      , being the evening before the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5.30 o'clock on the evening of the                      the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from, and he had no business in or near the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by X. Y. what he had been in the shed and behind the stack of timber for, and he denied having been in either place. X. Y. had reasonable and probable cause for suspecting, and did suspect that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

Delivered the                      day of                      18                      by  
X. Y., of                      Defendant's Solicitor.

**No. 56.**

(See *Ib.*, Form 15.)

**Fraud.**

In the High Court of Justice,  
— Division.

Writ issued 3rd September, 188 .

Between A. B., Plaintiff,  
and  
E. F., Defendant.

*Statement of Claim.*

**Claim.**

1. In or about                      March, 1880, the defendant caused to be inserted in the                      Newspaper an advertisement, in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade of a baker's shop and business, and described the same as an increasing business, and doing 12 barrels a week. The advertisement directed application for particulars to be made to X. Y.

2. The plaintiff having seen the advertisement applied to X. Y., who placed him in communication with the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at \_\_\_\_\_ with the lease, fixtures, fittings, stock-in-trade, and good-will.

3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than 12 barrels a week.

4. On the 5th of April, 1890, the plaintiff, believing the said statements of the defendant to be true, agreed to purchase the said premises from the defendant, for \$2000, and paid to him a deposit of \$300 in respect of the purchase.

5. On the 15th of April the purchase was completed, an assignment of the lease executed, and the balance of the purchase money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negotiations for the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than 4 barrels a week. And the said premises were not of the value of \$2000, or any saleable value whatever.

7. The defendant made the false representations hereinbefore mentioned well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.

The plaintiff claims \$ \_\_\_\_\_ damages.

The plaintiff proposes that this action should be tried at Brockville.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 57.

[Title.]

*Statement of Defence.*

1. The defendant says that at the time when he made the representations mentioned in the 3rd paragraph of the statement of claim and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over 12 barrels a week. And the defendant denies the allegations of the 6th paragraph of the statement of claim. Defence.

2. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, shewing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations, and not upon any statement or representation whatever of the defendant.

3. The defendant admits the allegations of paragraphs 1, 2, 3 and 4 of the statement of claim.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 58.

(See *Ib.*, Form 16.)

Guarantee.

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 3rd September, 1881.

Between A. B. and C. D., Plaintiffs,  
and  
E. F. and G. H., Defendants.

*Statement of Claim.*

1. The plaintiffs are brewers, carrying on their business at Guelph, Claim. under the firm of X. Y. & Co.

2. In the month of March, 1879, *M. N.* was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and the defendants and *M. N.*, that the plaintiffs should employ *M. N.* upon the defendants entering into the guarantee hereinafter mentioned.

3. An engagement in writing was accordingly made and entered into, on or about the 30th March, 1879, between the plaintiffs and the defendant, whereby, in consideration that the plaintiffs would employ *M. N.* as their collector, the defendants agreed that they would be answerable for the due accounting by *M. N.* to the plaintiffs for, and the due payment over by him to the plaintiffs of all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed *M. N.* as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st December, 1880.

5. At various times between the 29th of September, and the 25th of December, 1880, *M. N.* received on behalf of the plaintiffs and as their collector, sums of money from debtors of the plaintiffs, amounting in the whole to the sum of \$3,400; and of this amount *M. N.* neglected to account for or pay over to the plaintiffs sums amounting in the whole to \$908, and appropriated the last-mentioned sums to his own use.

6. The defendants have not paid the last-mentioned sums, or any part thereof, to the plaintiffs.

The plaintiffs claim:—(State claim.)

The plaintiffs propose that this action should be tried at Guelph.

Delivered the \_\_\_\_\_ day of 18 by  
X. Y., of Plaintiff's Solicitor.

No. 59.

Negligence.

(See *Ib.*, Form 20.)

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 3rd September, 1881.

Between *A. B.*, Plaintiff,  
and  
*E. F.*, Defendant.

Statement of Claim.

Claim.

1. The plaintiff is a shoemaker, carrying on business at Toronto. The defendant is a soap and candle manufacturer at the same place.

2. On the 23rd May, 1881, the plaintiff was walking eastward along the south side of King Street, in the city of Toronto, at about 3 o'clock in the afternoon. He was obliged to cross Yonge Street, which is a street running into King Street at right angles thereto. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant's under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of King Street into Yonge Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for 4 months ill and suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims \$ \_\_\_\_\_ damages.

The plaintiff proposes that this action should be tried at Lindsay.

Delivered the \_\_\_\_\_ day of 18 by  
X. Y., of Plaintiff's Solicitor.

No. 60.

[Title.]

*Statement of Defence.*

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to John Smith, of \_\_\_\_\_, a carman and contractor employed by the defendant to carry and deliver goods for him; and the persons under whose charge and control the said van was were the servants of the said John Smith.

2. The defendant denies that the van was turned out of King Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 61.

*Statement of Claim.*Action for  
Assault.

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 15th March, 18 \_\_\_\_.

Between A. B., Plaintiff,  
and  
E. F., Defendant.

1. The plaintiff is a \_\_\_\_\_ carrying on business at \_\_\_\_\_.  
2. On the \_\_\_\_\_ day of \_\_\_\_\_ the defendant assaulted the plaintiff, and the plaintiff was seriously hurt and wounded, and was for a long time in consequence of his injuries, unable to transact his business, and incurred expense for nursing and medical attendance.

3. [(*Amendment to meet defence infra.*)] The defendant pretends that he committed the assault complained of in his own defence; but the facts are that the defendant was trespassing on the plaintiff's land, and refused to leave though requested to do so, whereupon the plaintiff laid his hands on the defendant in order to remove him, using so much force and no more than was necessary for that purpose.]

The plaintiff claims \$ \_\_\_\_\_ damages.

The plaintiff proposes that this action should be tried at Cobourg.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 62.

[Title.]

*Statement of Defence.*

The plaintiff first assaulted the defendant who, thereupon, committed the alleged assault in his own defence.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 63. (*Reply where plaintiff does not introduce into his statement of claim the allegations necessary by way of reply to the defence.*)

[Title.]

*Reply.*

The defendant E. F., pretends that he committed the assault complained of in his own defence; but the facts are that the defendant was

trespassing on the plaintiff's land, and refused to leave though requested to do so, whereupon the plaintiff laid his hands on the defendant in order to remove him, using so much force and no more than was necessary for that purpose.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 64.

Action against  
Railway Com-  
pany for Inju-  
ries by Col-  
lision caused  
through  
Negligence.

Statement of Claim.

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued \_\_\_\_\_ 1881.

Between A. B., Plaintiff.  
and  
\_\_\_\_\_ Defendants.

1. The defendants are carriers of passengers upon a railway from Toronto to

2. In January, 1881, the plaintiff took a ticket from Toronto to and was received by the defendants as a passenger to be by them safely carried in a train which started from Toronto for

3. Owing to the negligence of the defendants in the management of their railway, the train in which the plaintiff was travelling came into collision with an engine, at a short distance from Toronto.

4. The plaintiff was thrown from his seat by the said collision, and much injured about the head, and had his right arm broken.

5. [The following paragraphs may be introduced by amendment to meet Defence infra. The defendants allege that the plaintiff accepted the sum of \$300 in full satisfaction of all cause of action which he might have on account of the said collision, but the facts are as follows :

6. A short time after the collision an officer of the defendants procured the plaintiff to accept the said accord and satisfaction by fraudulently representing that his injuries were of a temporary nature, and that if they should afterwards turn out to be more serious than he anticipated, he would still be able to obtain further compensation from the defendants.

7. The plaintiff fully believing the said representations, and acting upon the faith thereof, was induced thereby to accept the said accord and satisfaction, and then accepted the same subject to the express condition that he should not thereby exclude himself from further compensation from the defendants if his injuries should prove more serious than he then anticipated.

8. After the acceptance of the said accord and satisfaction, the injuries suffered by the plaintiff in the collision did turn out to be more serious than was anticipated at the time aforesaid, and thereupon the plaintiff commenced the present action.]

The plaintiff claims \$ \_\_\_\_\_ damages.

The plaintiff proposes that this action should be tried at Toronto.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 65.

[Title.]

Statement of Defence.

1. Shortly after the collision referred to in the statement of claim, one of the officers of the defendants called upon the plaintiff for the purpose of ascertaining from him whether he intended to make any claim against the defendants, arising out of the said collision.

2. At such interview the plaintiff informed the said officer that he did intend to make a claim against the defendants arising out of the said collision ; and it was there and then agreed between the plaintiff and the said

officer acting on behalf and by the authority of the defendants, that in consideration that the defendants would pay to the plaintiff a sum of \$300, he, the plaintiff, would accept such sum from the defendants in full satisfaction and discharge of all cause of action which he had or might have against the said defendants on account of the said collision.

3. Thereupon the said officer acting on behalf of the defendants, paid to the plaintiff the sum of \$300, and the plaintiff received the same in full discharge of the aforesaid cause of action.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 66. (*Reply where Plaintiff does not introduce into his statement of claim the allegations necessary by way of reply to the Defence.*)

[Title.]

*Reply.*

1. The defendants allege that the plaintiff accepted the sum of \$300 in full satisfaction of all cause of action which he might have on account of the said collision, but the facts are as follows :

2. A short time after the collision an officer of the defendants procured the plaintiff to accept the said accord and satisfaction by fraudulently representing that his injuries were of a temporary nature, and that if they should afterwards turn out to be more serious than he anticipated, he would still be able to obtain further compensation from the defendants.

3. The plaintiff fully believing the said representations, and acting upon the faith thereof, was induced thereby to accept the said accord and satisfaction, and then accepted the same subject to the express condition that he should not thereby exclude himself from further compensation from the defendants if his injuries should prove more serious than he then anticipated.

4. After the acceptance of the said accord and satisfaction, the injuries suffered by the plaintiff in the collision did turn out to be more serious than was anticipated at the time aforesaid and thereupon the plaintiff commenced the present action.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 67.

(*See Ib.*, Form 18.)

In the High Court of Justice,  
\_\_\_\_\_ Division.

Writ issued 3rd September, 1881.

Landlord and  
Tenant.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

*Statement of Claim.*

1. On the \_\_\_\_\_ day of \_\_\_\_\_ the plaintiff, by Claim. deed, let to the defendant a house and premises, No. 52 \_\_\_\_\_ Street, in the City of Belleville, for a term of 21 years from the \_\_\_\_\_ day of \_\_\_\_\_, at the yearly rent of \$400 payable quarterly.

2. By the said deed, the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for 21 days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the \_\_\_\_\_, a quarter's rent became due ; and on the \_\_\_\_\_, another quarter's rent became due. On the \_\_\_\_\_, both had been in arrear for 21 days, and both are still due.

5. On the same \_\_\_\_\_, the house and premises were not, and are not now, in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims :—

1. Possession of the said house and premises.
2. \$ \_\_\_\_\_ for arrears of rent.
3. \$ \_\_\_\_\_ damages for the defendant's breach of his covenant to repair.
4. \$ \_\_\_\_\_ for occupation of the house and premises from the \_\_\_\_\_, to the day of recovering possession.

The plaintiff proposes that this action should be tried at Belleville.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
 X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

**No. 68.**

(See *Ib.*, Form 24.)

Recovery of  
 Land.  
 Landlord and  
 Tenant.

In the High Court of Justice,  
 \_\_\_\_\_ Division.

Writ issued 4th January, 18 \_\_\_\_\_

Between A. B., Plaintiff,  
 and  
 C. D., Defendant.

*Statement of Claim.*

1. On the \_\_\_\_\_ day of \_\_\_\_\_ the plaintiff let to the defendant a house, No. 62 \_\_\_\_\_ Street, in the city of Ottawa, as tenant from year to year, at the yearly rent of \$120, payable quarterly, the tenancy to commence on the \_\_\_\_\_ day of \_\_\_\_\_.
2. The defendant took possession of the house and continued tenant thereof until the \_\_\_\_\_ day of \_\_\_\_\_ last, when the tenancy determined by a notice duly given.
3. The defendant has disregarded the notice and still retains possession of the house.
4. [Amendment to meet the counter-claim *infra*.] (The defendant C.D. acts up in his defence that the plaintiff agreed to give to the defendant a new lease and the plaintiff A. B. admits the agreement alleged in the statement of defence, but he refuses to grant to the defendant a lease, inasmuch as such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant, since the agreement was made, has not kept the house in good repair, and the same is now in a dilapidated condition.)

The plaintiff claims :—

1. Possession of the house.
2. \$ \_\_\_\_\_ for meane profits from the \_\_\_\_\_ day of \_\_\_\_\_.

The plaintiff proposes that this action should be tried at Ottawa.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ by  
 X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

**No. 69.** *Statement of Defence and Counter-claim.*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

Between A. B., Plaintiff,  
 and  
 C. D., Defendant.  
 (by original action,)

And between C. D., Plaintiff,  
 and  
 A. B., Defendant.  
 (by counter-claim.)

Defence.

The defence and counter-claim of the above-named C. D.

1. Before the determination of the tenancy mentioned in the statement of claim, the plaintiff A. B., by writing dated the \_\_\_\_\_ day of \_\_\_\_\_, and signed by him, agreed to grant to the defendant

C. D., a lease of the house mentioned in the statement of claim, at the yearly rent of \$450, for the term of 21 years, commencing from the day of , when the defendant, C. D.'s, tenancy from year to year determined, and the defendant has since that date been and still is in possession of the house under the said agreement.

2. By way of counter-claim the defendant claims to have the agreement specifically performed, and to have a lease granted to him accordingly. Counter-claim.

Delivered the day of 18 by X. Y., of Defendant's Solicitor.

No. 70.

Reply where plaintiff does not introduce into his statement of claim the allegations necessary by way of reply to the defence :

[Title]

Reply.

The plaintiff, A. B., admits the agreement stated in the defendant, C. D.'s, statement of defence, but he refuses to grant to the defendant a lease, because such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair, and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant, since the making of the said agreement, has not kept the house in good repair, and the same is now in a dilapidated condition. Reply.

Delivered the day of 18 by X. Y., of Plaintiff's Solicitor.

No. 71.

(See *Ib.*, Form 25.)

Recovery of Land.

In the High Court of Justice, Division.

Writ issued 18 . Between A. B. and C. D., Plaintiffs, and E. L., Defendant.

Statement of Claim.

1. K. L., late of Barrie in the County of Simcoe duly executed his last will, dated the 4th day of April, 18 , and thereby devised his lands in the County of Simcoe unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof. Claim.

2. K. L. died on the 3rd day of January 18 , and his said will was proved by the plaintiffs in the proper Surrogate Court on or about the 4th day of February, 18 .

3. K. L. was at the time of his death seised in fee of lot No. 1 in the 3rd concession of the township of , and lot No. 5 in the 4th concession of the township of , both in the County of Simcoe.

4. The defendant, soon after the death of K. L., entered into possession of the said lots, and has refused to give them up to the plaintiff.

The plaintiffs claim :—

- 1. Possession of the said 2 lots.
2. \$ for mesne profits of the premises from the death of K. L. till such possession shall be given.

The plaintiffs propose that this action should be tried at Barrie.

Delivered the day of 18 by X. Y., of Plaintiff's Solicitor.

No. 72.

Trespass.  
to Land.(See *Ib.*, Form 27.)In the High Court of Justice.  
— Division.

Writ issued 3rd October, 18 .

Between A. B., Plaintiff,  
and  
E. F., Defendant.*Statement of Claim.*

Claim.

1. The plaintiff was on the 5th March, 18 , and still is the owner and occupier of a farm in the Township of \_\_\_\_\_ in the County of \_\_\_\_\_, being lot No. 4 in the 7th concession of the said Township.

2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's and is separated therefrom by a fence and ditch.

3. For a long time prior to the 5th March, 18 , the defendant had wrongfully claimed to use the said road for his horses, carts and waggons on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th March, 18 , the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's fence and ditch upon each side of the road, and went upon the plaintiff's field beyond the fence and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use, or the user of the said road as a highway.

The plaintiff claims:—

1. Damages for the wrongs complained of.
2. An order restraining the defendant from any repetition of any of the acts complained of.
3. Such further relief as the nature of the case may require.

The plaintiff proposes that this action should be tried at Woodstock.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Plaintiff's Solicitor.

No. 73.

[Title.]

*Statement of Defence.*

1. The defendant says that the road was and is a public highway for horses and carriages; and a few days before the 5th of March, 18 , the plaintiff wrongfully erected the gate across the road for the purpose of obstructing and preventing, and it did obstruct and prevent the use of the road as a highway. And the defendant on the said 5th March, 18 , caused the said gate to be removed, in order to enable him lawfully to use the road by his horses, carts and waggons as a highway.

2. The defendant denies the allegations of the 5th paragraph of the statement of claim, and says that neither he nor any of his workmen or servants did any act, or used any violence, other than was necessary to enable the plaintiff lawfully to use the highway.

Delivered the \_\_\_\_\_ day of \_\_\_\_\_ 18 by  
X. Y., of \_\_\_\_\_ Defendant's Solicitor.

No. 74.

(R. Sup. C., Appx. (C), Form 28.)

*Form of Demurrer.*In the High Court of Justice,  
\_\_\_\_\_ Division.

A. B. v. C. D.

The defendant [plaintiff] demurs to the [plaintiff's statement of complaint or defendant's statement of defence, or of set-off, or of counter-claim] [or to so much of the plaintiff's statement of complaint as claims or as alleges as a breach of contract the matters mentioned in paragraph 7, or as the case may be], and says that the same is bad in law on the ground that [here state a ground of demurrer] and on other grounds sufficient in law to sustain this demurrer.

Delivered the  
X. Y., ofday of  
Plaintiff's Solicitor.

18 by

## APPENDIX (E).

## PRÆCIPES.

No. 75.

*Amended Summons.*

(See R. Sup. C., April, 1880, Form E, 18.)

[Title, &amp;c.]

Amend in pursuance of order [or fiat] dated \_\_\_\_\_ the writ of summons  
in this action by (*set out amendments when required*).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

Solicitor for the

No. 76.

*Renewed Summons.*(See *Ib.*, Form E, 19, R. Sup. C., Appx. A, Pt. 1, Form 5.)

[Title, &amp;c.]

Required in pursuance of order dated \_\_\_\_\_, a renewed writ of  
summons in this action,

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

Solicitor for the

No. 77.

*Entry of Appearance.*

(See R. Sup. C., April, 1880, Form E, 21.)

[Title, &amp;c.]

Enter an appearance for \_\_\_\_\_ in this action .

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)The said defendant require (or do not require, as the case may be) a  
statement of claim to be delivered.*(In case the defendant wishes to dispute the amount claimed, and to make  
no other defence, the following may be added),* The defendant disputes the  
amount claimed by the plaintiff, (or the defendant insists that the amount  
due to the plaintiff is \$ \_\_\_\_\_ only, or the defendant insists that the amount  
due to the plaintiff is, \$ \_\_\_\_\_ for principal and \$ \_\_\_\_\_ for interest, since  
the \_\_\_\_\_ day of \_\_\_\_\_ &c., and no more,) as the case may be.

No. 78. *Entry of Appearance in action for land limiting Defence.*

(See *Ib.*, Form E, 22.)

[Title, &c.]

Enter an appearance for the defendant \_\_\_\_\_ in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

The said defendant \_\_\_\_\_ require \_\_\_\_\_ a statement of claim to be delivered.

No. 79. *Entry of Appearance, by new defendant under Order 44, Rule 3.*

(See *Ib.*, Form E, 23.)

[Title, &c.]

Enter an appearance for \_\_\_\_\_ who has been served with an order dated the \_\_\_\_\_ day of \_\_\_\_\_ to carry on and prosecute the proceedings in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

No. 80. *Entry of Appearance, by party served with notice, under Order 12, Rule 19.*

(See *Ib.*, Form E, 24.)

[Title, &c.]

Enter an appearance for \_\_\_\_\_ to the notice issued in this action on the \_\_\_\_\_ day of \_\_\_\_\_ 18, by the defendant \_\_\_\_\_ under the Rules of the Supreme Court, Order 12, Rule 19.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

The said defendant \_\_\_\_\_ require \_\_\_\_\_ a statement of claim to be delivered.

No. 81. *Entry of Appearance to Counter-claim.*

(See *Ib.*, Form E, 25.)

[Title, &c.]

Enter an appearance for defendant \_\_\_\_\_ in this action. \_\_\_\_\_ to the counter-claim of the above-named

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

No. 82.

*Mandamus.**(See Ib. Form E, 14.)*

[Title, &amp;c.]

Required in pursuance of order dated a writ of mandamus directed  
to commanding to returnable

Dated the day of 18 .

(Signed)  
(Address)Solicitor for the  

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No. 83.

*Prohibition.**(See Ib. Form E, 13.)*In the High Court of Justice,  
— Division.In the matter of a certain now depending in the Court  
Between and Plaintiff,  
and Defendant.Required a writ of prohibition directed to the judge of the above-named  
Court and to the above-named plaintiff to prohibit them from further  
proceeding in the said

Dated, the day of 18 .

(Signed)  
(Address)Solicitor for the  

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No. 84.

*Certiorari.**(See Ib., Form E, 12.)*

[Title, &amp;c.]

Required in pursuance of order dated a writ of certiorari directed to

Dated the day of 18 .

(Signed)  
(Address)Solicitor for the  

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No. 85.

*Entry for Argument Generally.**(See Ib., Form E. 29.)*

[Title, &amp;c.]

Set down for argument the

Dated the day of 18 .

(Signed)  
(Address)

No. 86. *Entry of Demurrer for Argument.*

(See *Ib.* Form E, 28.)

[Title, &c.]

Enter for argument the demurrer of \_\_\_\_\_ to the \_\_\_\_\_ in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

No. 87. *Entry of Special Case.*

(See *Ib.*, Form E, 30, R. Sup. C., Appx. B, Form 13.)

[Title, &c.]

Set down for argument the special case filed in this action on the  
day of \_\_\_\_\_, 18 ; (or set down the \_\_\_\_\_ dated the \_\_\_\_\_ day of  
18 , of Mr. \_\_\_\_\_ the \_\_\_\_\_ referee in this  
or hearing as a special case).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

No. 88. *Search.*

(See *Ib.*, R. Sup. C., April, 1880, Form E., 82)

[Title, &c.]

Search for \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

Agent for \_\_\_\_\_  
Solicitor

No. 89. *Entry of Action for Trial.*

(See *Ib.*, Form E, 26.)

[Title, &c.]

Enter this action for trial.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(Signed)  
(Address)

No. 90. *Commission to Examine Witnesses.*

(See *Ib.*, Form E, 16.)

[Title, &c.]

Required in pursuance of order dated \_\_\_\_\_ a commission to examine  
witnesses directed to \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18

(Signed)  
(Address)

Solicitor for the \_\_\_\_\_

No. 91. *Habeas Corpus ad Testificandum.*(See *Ib.* Form E, 15.)

[Title, &amp;c.]

Required in pursuance of order dated \_\_\_\_\_ a writ of habeas corpus ad  
testificandum directed to the \_\_\_\_\_ to bring \_\_\_\_\_ before

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(Signed)  
(Address)

Solicitor for the

No. 92. *Entry of Appeal.*(See *Ib.*, Form E, 27.)

[Title, &amp;c.]

Enter this appeal from the order [or judgment] of \_\_\_\_\_ in this  
action, dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_(Signed)  
(Address)No. 93. *Fieri Facias.*

(See R. Sup. C., Appx. (E), Form 1.)

[Title, &amp;c.]

Required a writ of fieri facias directed to the sheriff of \_\_\_\_\_ to levy  
against C. D. \_\_\_\_\_ the sum of \$ \_\_\_\_\_ and interest  
thereon at the rate of \$ \_\_\_\_\_ per centum per annum from the  
day of \_\_\_\_\_ [and \$ \_\_\_\_\_ costs] toJudgment [or order] dated \_\_\_\_\_ day of \_\_\_\_\_  
Taxing master's certificate, dated \_\_\_\_\_ day of \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_

(Signed)  
(Address)Solicitor for the [party on whose behalf writ is]  
to issue.]No. 94 *Venditioni Exponas.*(See *Ib.*, Form 8.)

[Title, &amp;c.]

Required a writ of venditioni exponas directed to the sheriff of \_\_\_\_\_  
to sell the goods and \_\_\_\_\_ of C. D., taken under a writ of fieri  
facias in this action tested \_\_\_\_\_ day of \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(Signed)  
(Address)

Solicitor for the

No. 95. *Writ of Sequestration.*(See *Ib.*, Form 6.)

[Title, &amp;c.]

Required a writ of sequestration against *C. D.* for not  
 at the suit of *A. B.* directed to the sheriff of  
 Order dated day of

Dated the day of 18 .

(Signed)  
(Address)

Solicitor for the

No. 96. *Writ of Possession. (Lands.)*(See *Ib.*, Form 7.)

[Title, &amp;c.]

Required a writ of possession directed to the sheriff of to  
 deliver possession to *A. B.* of

Judgment dated day of .

Dated the day of 18 .

(Signed)  
(Address)

Solicitor for the

No. 97. *Writ of Delivery. (Chattels.)*(See *Ib.*, Form 8.)

[Title, &amp;c.]

Required a writ of delivery directed to the sheriff of to  
 make delivery to *A. B.* of .

Dated the day of 18 .

(Signed)  
(Address)

Solicitor for the

No. 98. *Writ of Attachment.*(See *Ib.*, Form 9.)

[Title, &amp;c.]

Required in pursuance of order dated day of  
 an attachment directed to the sheriff of against *C. D.* for  
 not delivering to *A. B.*

Dated the day of 18 .

(Signed)  
(Address)

Solicitor for the

## APPENDIX (F).

## SUBPŒNAS, &amp;c., FOR EXAMINATION OF WITNESSES.

(See R. Sup. C. April, 1880, Form G, 1.)

No. 99. *Subpœna ad Testificandum (General Form).*In the High Court of Justice,  
----- Division.

Between

and

Plaintiff.

Defendant.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day, until the above cause is tried, to give evidence on behalf of the (plaintiff or defendant.)

Witness, the Honourable President, &c., the day of 188 .

(See *Ib.*, Form[G, 2.)No. 100. *Subpœna Duces Tecum (General Form).*

[Title, &amp;c.]

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced.*)

Witness, the Honourable President, &c., the day of 188 .

(See *Ib.*, Form G, 3.)No. 101. *Subpœna ad Testificandum at Assizes.*

[Title, &amp;c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting: We command you to attend before our justices assigned to take the assizes in and for the county of to be holden at on day the day of 18 , at the hour of in the noon, and so from day to day during the said assizes until the above cause is tried, to give evidence on behalf of the

Witness, the Honourable President, &c., the day of 188 .

(See *Ib.*, Form G, 4.)

No. 102.

*Supbæna Duces Tecum at Assizes.*

[Title, &amp;c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to                      greeting: We command you to attend before our justices assigned to take the assizes in and for the county of                      to be holden at                      on                      day the                      day of                      18                      , at the hour of                      in the                      noon, and so from day to day during the said assizes, until the above cause is tried, to give evidence on behalf of the                      , and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced.*)

Witness, the Honourable                      President, &c., the  
day of                      .

 No. 103. *Commission to Examine Witnesses.*

(See *Ib.*, Form G, 11.)

[Title, &amp;c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to                      of commissioner named by and on behalf of the                      and to of                      a commissioner named by and on behalf of the                      greeting: Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *viva voce* as herein-after mentioned witnesses on behalf of the said                      and                      respectively at                      before you or either of you.—And we command you as follows:

1. Both the said                      and the said                      shall be at liberty to examine on interrogatories, and *viva voce* on the subject matter thereof or arising out of the answers thereto, such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *viva voce* on the subject matters thereof or arising out of the answers thereto, the party producing any witness for examination being at liberty to re-examine him *viva voce*; and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than 48 hours before the examination of any witness on behalf of either of the said parties, notice in writing, signed by one of you, the commissioner of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the other party by delivering the notice to [*name and address of the person named in the order for this purpose*] (or to a grown up person there) and shall be given also to the commissioner of the other party at the address aforesaid of such commissioner or to a grown up person for him at the said last mentioned address, and if the commissioner of that party neglect to attend pursuant to the notice, then you, the commissioner of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract shall be annexed to the witnesses' deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the commissioners or commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* ques-

tions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the \_\_\_\_\_ of the Supreme Court of Judicature on or before the \_\_\_\_\_ day of \_\_\_\_\_ inclosed in a cover under the seals or seal of the commissioners or commissioner.

8. Before you or any of you, in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, the Honourable \_\_\_\_\_ President, &c., the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord one thousand eight hundred and \_\_\_\_\_

This writ was issued by  
of \_\_\_\_\_  
agent for \_\_\_\_\_  
of \_\_\_\_\_  
solicitor for the \_\_\_\_\_  
who reside at \_\_\_\_\_

*Commissioners' Oath.*

You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. So help you God.

*Clerk's Oath.*

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions.

So help you God.

*Witnesses Oath.*

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God

*Interpreter's Oath.*

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which shall be administered to, and all and every the questions which shall be exhibited or put to all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English into the language of \_\_\_\_\_

such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

Direction of Interrogatories, &c., when returned by the Commissioners.

The \_\_\_\_\_ of the Supreme Court of Judicature,  
Osgoode Hall,  
Toronto. 

No. 104. *Habeas Corpus ad Testificandum.*

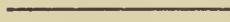
(See *Ib.*, Form G, 12.)

[Title, &c.]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the [keeper of our prison at] \_\_\_\_\_  
We command you that you bring \_\_\_\_\_, who it is said is detained in our prison under your custody \_\_\_\_\_, before \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, and so from day to day until the above action is tried, to give evidence on behalf of the \_\_\_\_\_. And that immediately after the said \_\_\_\_\_ shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, the Honourable \_\_\_\_\_ President, &c., the \_\_\_\_\_ day of \_\_\_\_\_

This writ was issued by \_\_\_\_\_  
solicitor for the \_\_\_\_\_ who reside at \_\_\_\_\_



## APPENDIX (G).

## CERTIORARI AND PROHIBITION.

(See *Ib.*, Form G, 8.)No 105. *Certiorari to County Court.*

[Title, &amp;c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the judge of the County Court of \_\_\_\_\_ greeting :

We, willing for certain causes to be certified of a certain cause pending in our Court before you against \_\_\_\_\_ at the suit of \_\_\_\_\_ command you that you send to us forthwith in the \_\_\_\_\_ Division of our High Court of Justice at Toronto, the proceedings in the said cause with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with the writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, the Honourable \_\_\_\_\_ President, &c., the  
day of \_\_\_\_\_

This writ was issued by  
of \_\_\_\_\_  
agent for \_\_\_\_\_  
of \_\_\_\_\_  
solicitor for the \_\_\_\_\_ who reside at \_\_\_\_\_

(See *Ib.*, Form G, 9.)No. 106. *Certiorari (General).*

[Title, &amp;c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the \_\_\_\_\_ greeting :

We, willing for certain causes to be certified of \_\_\_\_\_ command you that you send to us in our High Court of Justice at Toronto, on the \_\_\_\_\_ day of \_\_\_\_\_ the \_\_\_\_\_ aforesaid, with all things touching the same, as fully and entirely as they remain in \_\_\_\_\_ together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, the Honourable \_\_\_\_\_ President, &c., the  
day of \_\_\_\_\_

This writ was issued by  
of \_\_\_\_\_  
agent for \_\_\_\_\_  
of \_\_\_\_\_  
solicitor for the \_\_\_\_\_ who reside at \_\_\_\_\_

(See *Ib.*, Form G, 10.)No. 107. *Prohibition.*

[Title, &amp;c.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the [judge of the County Court holden at] \_\_\_\_\_ and to [name of plaintiff] of \_\_\_\_\_ greeting :

Whereas we have been given to understand that you the said have [entered an action against] *C. D.* in the said Court, and that the said Court has no jurisdiction in the said [cause] or to hear and determine the said [action] by reason that [state facts shewing want of jurisdiction].

We therefore hereby prohibit you from further proceeding in the said [action] in the said Court.

Witness, the Honourable \_\_\_\_\_ President, &c., the  
day of \_\_\_\_\_

This writ was issued by  
of \_\_\_\_\_  
agent for \_\_\_\_\_  
of \_\_\_\_\_  
solicitor for the \_\_\_\_\_ who reside at \_\_\_\_\_

## APPENDIX (H).

## ORDERS.

(See R. Sup. C., April, 1880, Form H, 1.)

No. 108. *Summons (General Form).*

(For use in outer counties.)

In the High Court of Justice,  
\_\_\_\_\_ Division.

Between

and

Plaintiff,

Defendant.

Let all parties concerned attend before me at my Chambers on day the \_\_\_\_\_ day of 18\_\_\_\_, at \_\_\_\_\_ o'clock in the noon, on the hearing of an application on the part of \_\_\_\_\_ for (state object of application, as in a notice of motion, according to forms in Appendix B).

Dated the \_\_\_\_\_ day of 18\_\_\_\_.

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_ solicitor, for  
To \_\_\_\_\_(See *Ib.*, Form H, 2.)No. 109. *Order (General Form).*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between

and

Plaintiff,

Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of 18\_\_\_\_, and \_\_\_\_\_

It is ordered \_\_\_\_\_ and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of 18\_\_\_\_.

(See *Ib.*, Form H, 18.)No. 110. *Order for Service out of Jurisdiction.*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between

and

Plaintiff,

Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of 18\_\_\_\_, and \_\_\_\_\_

It is ordered that the plaintiff \_\_\_\_\_ be at liberty to issue a writ for service out of the jurisdiction against \_\_\_\_\_

And it is further ordered that the time for appearance to the said writ be within \_\_\_\_\_ days after the service thereof, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of 18\_\_\_\_.

(See *Ib.*, Form H, 19.)**No. 111.** *Order for Substituted Service.*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_It is ordered that service of a copy of this order, and of a copy of the writ  
of summons in this action, by sending the same by a pre-paid and registered  
post letter, addressed to the defendant \_\_\_\_\_ at \_\_\_\_\_, shall be good and  
sufficient service of the writ.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

**No. 112.** *Order allowing Service made out of the Jurisdiction.*

(See Order 7.)

In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_It is ordered that the service of the writ (or notice of the writ) made  
upon the defendant as shown by the said affidavit, be allowed as good  
and sufficient service.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

(See *Ib.*, Form H, 20.)**No. 113.** *Order for Renewal of Writ of Summons.*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master, &amp;c.,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_It is ordered that the writ in this action be renewed for 12 months  
from the date of its renewal, pursuant to the Rules of the Supreme Court,  
Order 5., Rule 1.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

(See *Ib.*, Form H, 3.)**No. 114.** *Order for Time.*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master, &amp;c.,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_It is ordered that the \_\_\_\_\_ shall have \_\_\_\_\_ time for, &c. and that  
the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.



(See *Ib.*, Form H, 7.)

No. 118. Order under Order XI, No. 4 (leave to defend as to part on payment into Court, and as to residue unconditionally).

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
 Plaintiff,  
 Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of \$ \_\_\_\_\_, he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be at liberty to sign judgment for that sum and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim.

And it is ordered that in either event the statement of defence be delivered within \_\_\_\_\_ days after delivery of the plaintiff's statement of claim, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

(See *Ib.*, Form H, 8.)

No. 119. Order to Amend.

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
 Plaintiff,  
 Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by \_\_\_\_\_, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

(See *Ib.*, Form H, 9.)

No. 120. Order for names of Partners.

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[Name of the Judge or Master] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
 Plaintiff,  
 Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_

It is ordered that the \_\_\_\_\_ furnish the \_\_\_\_\_ with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the rule of the Supreme Court, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

(See *Ib.*, Form H, 10.)No. 121. *Order for Particulars (General).*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_It is ordered that the plaintiff deliver to the defendant \_\_\_\_\_ an account  
in writing of the particulars of the plaintiff's claim in this action,  
and that unless such particulars be delivered within \_\_\_\_\_ days from the  
date of this order all further proceedings be stayed until the delivery  
thereof, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 11.)No. 122. *Order for Particulars (Accident Case).*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_  
filed the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_It is ordered that the plaintiff deliver to the defendant an account in  
writing of the particulars of the injuries and expenses mentioned in the  
statement of claim, together with the time and place of the accident,  
and the particular acts of negligence complained of, and that unless  
such particulars be delivered within \_\_\_\_\_ days from the date of this  
order all further proceedings in this action be stayed until the delivery  
thereof, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 12.)No. 123. *Order to Discharge or Vary Order on Appli-  
cation by Third Party.*In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_  
filed the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_It is ordered that the order of \_\_\_\_\_ in this action dated the  
day of \_\_\_\_\_ 18 \_\_\_\_\_ be discharged [or varied by \_\_\_\_\_], and that the  
costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.





named by and on behalf of the \_\_\_\_\_ for the examination upon interrogatories and *viva voce* of witnesses on behalf of the said \_\_\_\_\_ and respectively at \_\_\_\_\_ aforesaid before the said commissioners.

2. \_\_\_\_\_ days previously to the sending out of the said commission, the solicitor of the said \_\_\_\_\_ shall give to the solicitor of the said \_\_\_\_\_ notice in writing of the mail or other conveyance by which the commission is to be sent out.

3. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any document, copy, or extract and the official copies thereof, and all other costs incidental thereto, shall be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .~~8~~

(See *Ib.*, Form H, 31.)

**No. 130.**      *Order of Reference under S. 47 of the Act.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the day of \_\_\_\_\_ 18, and \_\_\_\_\_  
It is ordered that the following question arising in this action namely, \_\_\_\_\_ be referred for inquiry and report to \_\_\_\_\_ under section 47 of the Judicature Act, and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(See *Ib.*, Form H, 32.)

**No. 131.**      *Order of Reference under S. 48 of the Act.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

[Name of the Judge or Master,] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the day of \_\_\_\_\_ 18, and \_\_\_\_\_  
It is ordered that the [state whether all or some and, if so, which of the questions are to be tried] in this action be tried by \_\_\_\_\_  
And it is ordered that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 .

(See *Ib.*, Form H, 33.)No. 132. *Order of Reference to Master.*In the High Court of Justice,  
— Division.[*Name of the Judge or Master,*] in Chambers.Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_It is ordered that this action [or the matters of account in this action,  
or the following questions in this action being matters of account, namely,  
*stating them*] be referred to the certificate of \_\_\_\_\_\_\_\_\_\_, with all the powers as to certifying and  
amending of a Judge of the High Court of Justice, and that the costs of  
the \_\_\_\_\_ and of the reference be in the discretion of the said \_\_\_\_\_,  
and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 34.)No. 133. *Order for Examination of Witnesses before Trial.*In the High Court of Justice,  
— Division.[*Name of the Judge or Master,*] in Chambers.Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed  
the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_It is ordered that \_\_\_\_\_ a witness on behalf of the \_\_\_\_\_ be examined  
*viva voce* (on oath or affirmation) before \_\_\_\_\_[or before \_\_\_\_\_ esquire, special examiner], the  
solicitor or agent giving to the \_\_\_\_\_ solicitor or agent \_\_\_\_\_ notice in  
writing of the time and place where the examination is to take place.And it is further ordered that the examination so taken be filed in the  
Office of \_\_\_\_\_, and that an office copy or copies thereof may be  
read and given in evidence on the trial of this cause, saving all just excep-  
tions, without any further proof of the absence of the said witness than  
the affidavit of the solicitor or agent of the \_\_\_\_\_ as to his belief, and  
that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

(See *Ib.*, Form H, 87.)No. 134. *Garnishee Order (Attaching Debt).*In the High Court of Justice,  
— Division[*Name of the Judge or Master,*] in Chambers.Between Judgment Creditor,  
and Judgment Debtor.  
Garnishee.Upon hearing , and upon reading the affidavit of , filed  
the day of 18 , and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 18 , for the sum of \$ , on which judgment the said sum of \$ , remains due and unpaid.

And it is further ordered that the said garnishee attend the in Chambers (or as the case may be) on day the day of 18 , at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

And that the costs of this application be

Dated the day of 18 .

(See *Ib.*, Form H, 88.)No. 135. *Garnishee Order (Absolute).*In the High Court of Justice,  
— Division.[*Name of the Judge or Master, &c.,*] in Chambers.Between Judgment Creditor,  
and Judgment Debtor.  
Garnishee.Upon hearing , and upon reading the affidavit of filed  
the day of 18 , and whereby it was ordered  
that all debts owing or accruing due from the above-named garnishee to  
the above-named judgment debtor should be attached to answer a judgment  
recovered against the said judgment debtor by the above-named  
judgment creditor in the High Court of Justice on the day of  
18 , for the sum of \$ , on which judgment the said  
sum of \$ remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt), and that in default thereof execution may issue for the same, and that the costs of this application be

Dated the day of 18 .

(See *Ib.*, Forms H, 39-51.)

No. 136. *Order on Application to tax Solicitor's  
Bill of Costs.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

[*Name of the Judge or Master*] in Chambers.

In the matter of

Gentleman,  
One of the Solicitors of the Supreme Court.

Upon application of  
It is ordered that the bill of fees, charges and disbursements delivered to  
the applicant by the above-named solicitor (or by the above solicitor to  
*as the case may be*) be referred to the \_\_\_\_\_ to be taxed,  
and that the said \_\_\_\_\_ do take an account of all sums of money  
received by the said solicitor of or on account of the applicant-

And it is ordered that the costs of this application be

Dated \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ .

(See *Ib.*, Form H, 42; R. S. O., c. 49, s. 3.)

No. 137. *Order to try Action in County Court.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

[*Name of the Judge or Master*] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_

It is ordered that this action be tried before the County Court of  
\_\_\_\_\_, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ .

(See R. Sup. C., April, 1880, Form H, 44; R. S. O., c. 50, s. 304.)

No. 138. *Order for Examination touching Means.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

\_\_\_\_\_ Judge in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_  
Judgment Creditor,  
Judgment Debtor.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_

It is ordered that the above named \_\_\_\_\_ do attend before the \_\_\_\_\_ in  
Chambers on the \_\_\_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ in the \_\_\_\_\_ noon, to  
be examined upon oath touching his means of paying the judgment debt,  
and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ .



It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of fieri facias issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof, into Court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure and sale by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within \_\_\_\_\_ from this date, and be returned by the defendant therein within \_\_\_\_\_ days, and be tried at \_\_\_\_\_

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See *Ib.*, Form H, 51.)

**No. 142.** *Interpleader Order, No. 4.*

In the High Court of Justice,  
\_\_\_\_\_ Division.

[*Name of the Judge or Master*] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_ Plaintiff,  
and between \_\_\_\_\_ Defendant,  
and the said \_\_\_\_\_ execution creditor, and \_\_\_\_\_ Claimant,  
the sheriff of \_\_\_\_\_ Respondents.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the day of \_\_\_\_\_ 18 \_\_\_\_\_, and \_\_\_\_\_

It is ordered that upon payment of the sum of \$ \_\_\_\_\_ into Court by the said claimant within \_\_\_\_\_ from this date, or upon his giving within the same time security to the satisfaction of \_\_\_\_\_

for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of fieri facias herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of seizure and sale by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within \_\_\_\_\_ from this date, and be returned by the defendant therein within \_\_\_\_\_ days, and be tried at \_\_\_\_\_

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See *Ib.*, Form H, 52.)

**No. 143.** *Interpleader Order, No. 5.*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[*Name of the Judge or Master*] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_ Plaintiff,  
 \_\_\_\_\_ and between \_\_\_\_\_ Defendant,  
 \_\_\_\_\_ Claimant,  
 and the said \_\_\_\_\_ execution creditor, and  
 the sheriff of \_\_\_\_\_ Respondents.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
 day of \_\_\_\_\_ 18 \_\_\_\_\_, and  
 It is ordered that upon payment of the sum of \$ \_\_\_\_\_ into court by the  
 said claimant, or upon his giving security to the satisfaction of \_\_\_\_\_  
 for the payment of the same amount by  
 the claimant according to the directions of any order to be made herein,  
 the above-named sheriff withdraw from the possession of the goods seized  
 by him under the writ of fieri facias issued herein.

And it is further ordered that in the meantime, and until such payment  
 made or security given, the sheriff continue in possession of the goods,  
 and the claimant pay possession money for the time he so continues,  
 unless the claimant desires the goods to be sold by the sheriff, in which  
 case the sheriff is to sell them and pay the proceeds of the sale, after  
 deducting the expenses thereof and the possession money from this date,  
 into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an  
 issue in the High Court of Justice, in which the claimant shall be plain-  
 tiff and the execution creditor shall be defendant, and that the question  
 to be tried shall be whether at the time of the delivery of the said writ  
 to the sheriff the goods seized were the property of the claimant as against  
 the execution creditor.

And is further ordered that this issue be prepared and delivered by the  
 plaintiff therein within \_\_\_\_\_ from this date, and be returned by the  
 defendant therein within \_\_\_\_\_ days, and be tried at \_\_\_\_\_

And it is further ordered that the question of costs and all further  
 questions be reserved until after the trial of the said issue, and that no  
 action shall be brought against the sheriff for the seizure of the said  
 goods.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See *Ib.*, Form H, 53.)

**No. 144.** *Interpleader Order, No. 6.*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[*Name of the Judge or Master*] in Chambers.

Between \_\_\_\_\_ and \_\_\_\_\_ Plaintiff,  
 \_\_\_\_\_ and between \_\_\_\_\_ Defendant,  
 \_\_\_\_\_ Claimant  
 and the said \_\_\_\_\_ execution creditor and  
 the sheriff of \_\_\_\_\_ Respondents.

The claimant and the execution creditor having requested and consented  
 that the merits of the claim made by the claimant be disposed of and  
 determined in a summary manner, now upon hearing \_\_\_\_\_ and upon  
 reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and

It is ordered that  
 And that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(See *Ib.*, Form H, 54.)

No. 145. *Interpleader Order, No. 7.*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[*Name of the Judge or Master*] in Chambers.

Between \_\_\_\_\_ Plaintiff,  
 and \_\_\_\_\_ Defendant,  
 and between \_\_\_\_\_ Claimant,

and the said execution creditor and Respondents  
 the sheriff of \_\_\_\_\_

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
 the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of fieri facias issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale, (after deducting the expenses thereof, and rent, if any,) the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

(See *Ib.*, Form H, 55.)

No. 146. *Order dismissing Motion (Generally).*

In the High Court of Justice,  
 \_\_\_\_\_ Division.

[*Name of the Judge or Master*] in Chambers.  
 Between \_\_\_\_\_ Plaintiff,  
 and \_\_\_\_\_ Defendant.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed  
 the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_

It is ordered that the application of \_\_\_\_\_ be dismissed, (*if the dismissal is with costs add*), with costs to be taxed and paid by the \_\_\_\_\_ to the \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

## APPENDIX (I).

## No. 147. FORMS OF JUDGMENT.

*Default of Appearance or Defence in case of Liquidated Demand.**(See R. Sup. C., Appendix (D), Form 1.)*In the High Court of Justice,  
\_\_\_\_\_ Division.

[18 .]

Between *A. B.*, Plaintiff,  
and  
*C. D.* and *E. F.*, Defendants.

The \_\_\_\_\_ day of \_\_\_\_\_ 18 .

The defendants [or the defendant *C. D.*] not having appeared herein [or not having delivered any statement of defence], it is this day adjudged that the plaintiff recover against the said defendant \$ \_\_\_\_\_, and costs to be taxed.

No. 148. *Judgment in Default of Appearance or Defence where the Demand is Liquidated (Fixed costs).*

[Title, &amp;c.]

The \_\_\_\_\_ day of \_\_\_\_\_, 18 .

The defendant \_\_\_\_\_ not having (appeared to the writ of summons or delivered any statement of defence or demurrer) it is this day adjudged that the plaintiff recover against the said defendant \$ \_\_\_\_\_ and \$ \_\_\_\_\_ costs.

No. 149. *Judgment in Default of Appearance in action for Recovery of Land.**(See Ib., Form 2.)*

[Title, &amp;c.]

The \_\_\_\_\_ day of \_\_\_\_\_ 18 .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned.

No. 150. *Judgment in Default of Defence in action for Recovery of Land.*

[Title, &amp;c.]

The \_\_\_\_\_ day of \_\_\_\_\_, 18 .

No statement of defence having been delivered herein, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim herein mentioned and described as

No. 151. *Judgment in Default of Defence in Action for Recovery of Land with Damages.*

(See Order 15, R. 8.)

[Title, &c.]

The            day of            , 18            .

The defendant not having delivered any statement of defence, it is this day adjudged that the plaintiffs recover possession of the land in the statement of claim herein mentioned, and described as            , in the County of            , and costs to be taxed, and it is further adjudged that the plaintiffs recover against the defendant damages to be assessed.

Certificate for \$            , taxed costs, dated the            day of            , 18            .

(See R. Sup. C., April 1880, Form D, 8.)

No. 152. *Interlocutory Judgment in Default of Appearance or Defence where Demand Unliquidated.*

[Title, &c.]

The            day of            18            .

No appearance having been entered to the writ of summons (or no statement of defence or demurrer having been delivered by the defendant) herein;

It is this day adjudged that the plaintiff recover against the defendant the value of the goods or damages, or both, as the case may be, to be assessed.

(See *Ib.*, Form D, 9.)

No. 153. *Judgment after Appearance and Order under Order XI., Rule 1.*

[Title, &c.]

The            day of            18            .

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of            , dated            day of 18            , obtained leave to sign judgment under the Rule of the Supreme Court, No. 87, for (*recite order*). It is this day adjudged that the plaintiff recover against the defendant \$            and costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by a Master's Certificate dated the            day of            18            .

No. 154. *Judgment in Default of Appearance or Defence, after Assessment of Damages.*

(See *Ib.*, Form 3.)

[Title, &c.]

The            day of            , 18            .

No appearance having been entered to the writ of summons [or no statement of defence or demurrer having been delivered by the defendant] herein, and the damages which the plaintiff was entitled to recover having been assessed at \$            , as by            dated the

\$            18            , appears, it is adjudged that the plaintiff recover and costs to be taxed.

(See *Ib.*, Form D, 10.)

No. 155. *Judgment after Trial by Court without Jury.*  
(No. 1.)

[Title, &amp;c.]

The            day of            18            .  
This action having on the            day of            18            , been tried before  
and the said            on the            day of            18            , having ordered  
that judgment be entered for the            for \$            \$  
It is this day adjudged that the            recover from the            \$  
and costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by  
a taxing officer's Certificate dated the            day of            18            .

No. 156. *Judgment at Trial by Judge without a Jury.*  
(No. 2.)

(See *Ib.*, Form 4.)

[Title, &amp;c.]

The            day of            , 18            .

Judgments. The action coming on for trial [the            day of            and]  
this day, before            in the presence of counsel for the plain-  
tiff and the defendants [or, if some of the defendants do not appear, for  
the plaintiff and the defendant C. D., no one appearing for the defend-  
ants E. F. and G. H., although they were duly served with notice of trial  
as by the affidavit of            filed the            day of            appears,]  
upon hearing read the pleadings and what was alleged by counsel on  
both sides, this Court doth declare, &c.  
And this Court doth order and adjudge, &c.

No. 157. *Judgment after Trial by a Jury.*

(See *Ib.*, Form 5.)

[Title, &amp;c.]

The            day of            , 18            .

The action having on the 12th and 13th November, 18            , been tried  
before the Honourable Mr. Justice            and a special jury of the  
county of            , and the jury having found [*state findings as in*  
*Judge's or officer's certificate*], and the said Mr. Justice            having  
ordered that judgment be entered for the plaintiff for \$            and costs of  
suit [*or as the case may be*]: Therefore it is adjudged that the plaintiff  
recover against the defendant \$            and \$            for his costs of  
suit [*or that the plaintiff recover nothing against the defendant, and*  
*that the defendant recover against the plaintiff \$            for his costs of*  
*defence, or as the case may be.*]

No. 158. *Judgment after Trial before Referee.*

(See *Ib.*, Form 6.)

[Title, &amp;c.]

The            day of            , 18            .

The action having on the 27th November, 18            , been tried before X. Y.,  
Esq., an official [*or special*] referee; and the said X. Y., having found  
[*state substance of referee's certificate*], it is this day adjudged that

(See R. Sup. C., April 1880, Form D, 6a )

No. 159. *Judgment after Trial of Questions of Account by Referee.*

[Title, &amp;c.]

The            day            of            18 .

The questions of account in this action having been referred to

and he having found that there is due from the            to the            the sum of \$            and directed that the            do pay the costs of the reference.

It is this day adjudged that the            recover against the said \$            and costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by a taxing officer's Certificate dated the            day of            18 .

No. 160. (See *Ib.*, Form D, 19 ; Order 40.)

*Judgment on Motion Generally.*

[Title, &amp;c.]

The            day of            18 . (Date of order of Court.)

This action having on the            day of            18 come on before the Court on motion for judgment on behalf of the            , and the Court after hearing counsel for the            having ordered that            (as in order of Court.)

It is this day adjudged that the            recover against the the sum of \$            and costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by a taxing officer's Certificate dated the            day of            18 .

(See *Ib.*, Form D, 11.)

No. 161. *Judgment in pursuance of order. (For use where leave had been given to sign judgment unless some condition should be complied with.)*

The            day of            18 .

Pursuant to the order of            dated            18 whereby it was ordered            and default having been made

It is this day adjudged that the plaintiff recover against the said defendant \$            and costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by a taxing officer's Certificate dated the            day of            18 .

No. 162. *Judgment in pursuance of order. (For use where leave had been given to sign judgment unless money should be paid into Court).*

[Title, &amp;c.]

The            day of            18 .

Pursuant to the order of            dated the            day of 18 , whereby it was ordered that unless \$            be paid into court by the defendant within a week, the plaintiff be at liberty to sign final judgment for amount indorsed on the writ of summons with interest, if any, and costs ; and the said defendant not having paid into court the said sum of \$            , as conditioned by the said order, it is this day adjudged that the plaintiff recover against the defendant \$            and \$            for costs.

Certificate for costs dated the            day of            18 .

(See *Ib.*, Form D, 12.)**No. 163.** *Judgment on Certificate of Clerk of County Court.*

[Title, &amp;c.]

The            day of            18            .

This action having been ordered to be tried in the County Court of  
and the Clerk of that Court having certified that the result was

It is this day adjudged that            recover against            \$            and  
costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by  
a taxing officer's Certificate dated the            day of            18            .

(See *Ib.*, Form D, 13.)**No. 164.** *Judgment for Defendant's Costs on Discontinuance.*

[Title, &amp;c.]

The            day of            18            .

The plaintiff having by a notice in writing dated the            day o  
18            , Wholly discontinued this action, [or withdrawn his  
claim in this action for or withdrawn so much of his claim in this  
action as relates to—*or as the case may be.*]

It is this day adjudged that the defendant recover against the plaintiff  
costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by  
a taxing officer's Certificate dated the            day of            18            .

**No. 165.** (See *Ib.*, Form D, 14.)*Judgment for Plaintiff's Costs after Confession of Defence.*

[Title, &amp;c.]

The            day of            18            .

The defendant in his statement of defence herein having alleged a  
ground of defence which arose after the commencement of this action,  
and the plaintiff having on the            day of            18            delivered a  
confession of that defence.

It is this day adjudged that the plaintiff recover against the defendant  
costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by  
a taxing officer's Certificate dated the            day of            18            .

**No. 166.** (See *Ib.*, Form D, 15.)*Judgment for Costs after Acceptance of Money paid into Court.*

[Title, &amp;c.]

The            day of            18            .

The defendant having paid into court in this action the sum of \$  
in satisfaction of the plaintiff's claim, and the plaintiff having by his notice  
dated the            day of            18            , accepted that sum in satisfaction of  
his entire cause of action, and the plaintiff's costs herein having been  
taxed, and the defendant not having paid the same within 48 hours  
after the said taxation;

It is this day adjudged that the plaintiff recover against the defendant  
costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by  
a taxing officer's Certificate dated the            day of            18            .

No. 167. (See *Ib.*, Form D, 18.)

*Judgment on Motion after Trial of Issue.* (See Order 32.)

[Title, &c.]

The            day of            18            . (Date of order of Court.)

The (Issues or Questions) of fact arising in this action by the order dated the            day of            ordered to be tried before            having on the            day of            been tried before            , and the            having found            , Now on motion before the Court for judgment on behalf of the            , the Court having

It is this day adjudged that the            recover against the            the sum of \$            and costs to be taxed.

The above costs have been taxed and allowed at \$            , as appears by a taxing officer's Certificate dated the            day of            18            .

No. 168. *Form of Judgment on Præcipe for Sale or Foreclosure WITH REFERENCE AS TO INCUMBRANCES, &c., and orders for Immediate Payment and Delivery of Possession.*

[Title, &c.]

1. Upon the application of the plaintiff under Rule No. 78, of the rules of the Supreme Court, and upon reading the writ of summons issued in this action, and indorsed under Rule No. 17, and an affidavit of, &c., filed, &c., and an affidavit of, &c., filed, &c., of service of the said writ on the defendant, and no appearance having been entered in the said action as by the (books in the office of the            at            ) appears;

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for redemption or sale (or redemption or foreclosure), and that for these purposes the cause be referred to the Master of this Court at

3. (Where judgment is for immediate payment add, It is further ordered that the defendant            do forthwith after the making of the Master's report pay to the plaintiff what shall be found due to him for principal money, interest and costs at the date of the said report, and upon payment of the amount due to him (where judgment is for sale add, before the sale hereinbefore directed shall have taken place) that the plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto.)

4. (Where judgment is for immediate possession add, It is further ordered that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the lands and premises in question, in this cause, or of such part thereof as may be in the possession of the said defendant.)

No. 169. *Form of Judgment for Foreclosure or Sale, ACCOUNT TAKEN BY REGISTRAR, and Orders for Immediate Payment and Delivery of Possession.*

[Title, &c.]

1. Upon the application of the plaintiff under Rule No 78, of the rules of the Supreme Court, and upon reading the writ of summons issued in this action, and indorsed under Rule No. 17, and an affidavit of, &c., filed, &c., and an affidavit of, &c., filed, &c., of service of the said writ on the defendant, and no appearance having been entered in the said action as by the (books in the office of the            at            ) appears;

2. This Court finds that the subsequent interest at the rate of            per centum per annum on the sum of            principal money secured by the indenture of mortgage in the pleadings mentioned, up to the day of            next, being the time appointed for payment as hereinafter mentioned, amounts to            and that the costs of the plaintiff amount to            which said subsequent interest and costs being added to the sum of            claimed by the indorsement on the writ served

on the defendant make together the sum of

3. And upon the said defendant paying the said sum of into the bank at the between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of next, to the joint credit of the plaintiff and the Registrar [*where order for payment granted insert, or in case the plaintiff shall (where judgment is for sale add, before the sale hereinafter directed shall have taken place)* recover the amount due to him under the order for payment hereinafter contained], it is ordered that the said plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto;

4. But in default of the said defendant making such payment by the time aforesaid, it is ordered (*where judgment is for foreclosure, after "it is ordered," say "that the said defendant do stand absolutely debarred and foreclosed, of and from all equity of redemption in and to the said premises;" where judgment is for sale, then after the words "it is ordered," say "that the said premises be sold, with the approbation of the Master of this Court at* ).

5. (*If judgment is for foreclosure omit this section.*) And it is ordered that the purchasers do pay their purchase money into Court, to the credit of this cause, and that the same when so paid in be applied in payment of what has been found due to the said plaintiff together with subsequent interest and subsequent costs, to be computed and taxed by the said Master, and that the balance do abide the further order of the Court.

6. (*Where judgment is for immediate payment add:)* It is further ordered that the defendant do forthwith pay to the plaintiff the sum of being the amount due to the plaintiff at the date hereof for principal money, interest and costs.

7. (*Where judgment is for immediate possession add:)* And it is further ordered that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the mortgaged premises, or of such part thereof as may be in the possession of the said defendant.

No. 170. *Form of Judgment for Redemption, issued by a local Master.*

[Title, &c.]

1. Upon the application of the plaintiff, under Rule No. 78, of the rules of the Supreme Court, and upon reading the writ of summons issued in this action, and indorsed under Rule No. 16, and an affidavit of, &c., filed, &c., and an affidavit of, &c., filed, &c., of service of the said writ on the defendant, and no appearance having been entered in the said action, as by the (books in the office of the at ) appears;

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for the redemption of the premises in question, and that for this purpose the cause be referred to the Master at

3. And it is ordered that upon the plaintiff paying to the defendant what shall be found due to him, or in case nothing shall be found due to the defendant then forthwith after the confirmation of the said Master's report, that the defendant do reconvey the said mortgaged premises, and deliver up all documents relating thereto.

4. It is further ordered that in case the plaintiff shall make default in payment as aforesaid of what may be found due to the defendant that the plaintiff's action do stand dismissed out of this Court, with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.

5. It is further ordered that in case nothing shall be found due from the plaintiff to the defendant that the defendant do pay the plaintiff his costs of this suit forthwith after taxation thereof, and in case any balance shall be found due from the defendant to the plaintiff that the defendant do pay such balance to the plaintiff forthwith after the confirmation of the Master's report.

No. 171. *Form of Judgment for Administration by a  
Local Master.*

(See Order 1, R. 3.)

1. Upon the application of the above-named plaintiff in the presence of the solicitor for the Defendant [or no one appearing for the defendant although duly notified as by affidavit filed appears], and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant or all parties].

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the administration and final winding up of the personal [and real] estate of \_\_\_\_\_ and for the adjustment of the rights of all parties interested therein, by the Master of this Court at \_\_\_\_\_.

3. And it is ordered that all balances which may be found due from the Plaintiff or Defendant [or any or either of them] to the said estate be, forthwith after the same shall have been ascertained as aforesaid, paid into Court to the credit of this cause, subject to the further order of the Court.

4. And it is ordered that such personal [and real] estate, or such parts thereof as the said Master may hereafter direct, be sold, as the said Master may direct, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court.

5. It is further ordered that the Master do execute conveyances for any infant parties who by reason of their tender years are unable to execute the same.

No. 172. *Form of Judgment for Partition or Sale  
by a County Court Judge or a Local Master.*

(See Order 1, R. 3.)

1. Upon the application of the above-named plaintiff in the presence of the solicitor for the defendant [or no one appearing for the defendant although duly notified as by affidavit filed appears] and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant or all parties.]

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the partition or sale of the lands and premises in the said affidavits mentioned, and for the adjustment of the rights of all parties interested therein, or for a partition of part and sale of the remainder of the said lands as may be most for the interest of the parties entitled to share therein [by the Master of this Court at \_\_\_\_\_].

3. And it is further ordered that the said lands, or such part thereof as the said Master shall think fit, be sold, with the approbation of the said Master, freed from the claims of such of the incumbrancers thereon (if any) whose claims were created by parties entitled to the said lands before the death of the said testator [or, intestate] as shall have consented to such sale, and subject to the claims of such of them as shall not have consented [and freed also from the dower of \_\_\_\_\_ as the case may be], and that the said Master \_\_\_\_\_ do execute the conveyances on behalf of such of the infant parties as, by reason of their tender years, are unable to execute the same, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court.

4. And it is further ordered that, in the event of a partition of the whole of the said land, or in the event of a partition of a part and the proceeds of the sale of the remainder being insufficient to pay the costs in full, the costs, or so much thereof as remains unpaid, be borne and paid by the said parties according to their shares and interests in the said lands [if there be any infant parties interested in the estate add] and that the proportion of the said costs payable by the infant parties respectively be, and the same is hereby declared to be, a lien on their respective shares, and that the plaintiff do pay the guardian of the infant defendants his costs of this suit and that the same be added to his own costs.

No. 173.

*Certificate of Taxation.*

[Title, &c.]

I certify that the costs of the \_\_\_\_\_ have been taxed and allowed  
at \$ \_\_\_\_\_

Dated &c. \_\_\_\_\_

No. 174.

(See R. Sup. C., Appx. B, Form 15.)

*Form of Certificate of Officer after Trial by a Jury.*

[Titles &c.]

I certify that this action was tried before the Honourable Mr. Justice  
and a special jury of the county of \_\_\_\_\_ on the  
and \_\_\_\_\_ days of -October, 188 \_\_\_\_\_ .

The Jury found [*state findings*].

(*If the Judge gives instructions as to the judgment thereon, add*), And the  
said Judge directed, &c., [*as the case may be.*]

Dated, &c. \_\_\_\_\_

## APPENDIX (J).

## No. 175. WRITS OF EXECUTION.

*Writ of Fieri Facias.*

(See R. Sup. C., Appx. F, Form 1.)

In the High Court of Justice,  
— Division.Between *A. B.*, Plaintiff,  
and  
*C. D.* and others, Defendants.Victoria, by the Grace of God, of the United Kingdom of Great Britain  
and Ireland, Queen, Defender of the Faith.

To the sheriff of greeting.

We command you that of the goods and chattels (*or lands and tenements*) of *C. D.* in your bailiwick you cause to be made the sum of \$ and also interest thereon from the day of [Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be,] which said sum of money and interest were lately before the Justices of our High Court of Justice in a certain action [or certain actions, as the case may be] wherein *A. B.* is plaintiff, and *C. D.* and others are defendants [or in a certain matter there depending intituled "In the matter of *E. F.*," as the case may be] by a judgment [or order as the case may be] of our said Court, bearing date the day of adjudged [or ordered, as the case may be] to be paid by the said *C. D.* to *A. B.*, together with certain costs in the said judgment [or order as the case may be] mentioned, and which costs have been taxed and allowed (by one of the taxing masters of our said Court) at the sum of \$ as appears by the certificate of the said taxing master, dated the day And that of the goods and chattels (*or lands or tenements*) of the said *C. D.* in your bailiwick you further cause to be made the said sum of \$ [costs], together with interest thereon from the day of (the date of the certificate of taxation. *The writ must be so moulded as to follow the substance of the judgment or order*) and that you have that money and interest before our Justices aforesaid at Toronto immediately after the execution hereof, (*or, in the case of lands and tenements, immediately after the expiration of twelve months from the day of your receipt hereof*) to be paid to the said *A. B.* in pursuance of the said judgment [or order as the case may be]. And in what manner you shall have executed this our writ make appear to our Justices aforesaid at Toronto immediately after the execution thereof. And have there then this writ.

Witness, the Honourable President, &c.  
The day of 18 .

## No. 176. FIERI FACIAS ON ORDER FOR COSTS.

(See R. Sup. C., April, 1880, Form F. 1a.)

[Title, &amp;c.]

Victoria, &amp;c.

To the sheriff of greeting.

We command you that of the goods and chattels of in your bailiwick you cause to be made the sum of for certain costs which

by an order of our High Court of Justice dated the                    day of  
 18                   , were ordered to be paid by the said                    to  
 and which have been taxed and allowed at the said sum, and interest on  
 the said sum at the rate of 6 per centum per annum from the                    day  
 of                    18                   , and that you have the said sum and interest before the  
 Justices of our High Court at Toronto, immediately after the execution here-  
 of, to be rendered to the said                   . And in what manner you shall have  
 executed this our writ make appear to us immediately after the execution  
 hereof. And have there then this writ.

Witness, &c.

The                    day of                    18                   .

*Indorsements.*

Levy \$                    and \$                    for costs of execution, &c., and also interest  
 on \$                    at 6 per centum per annum from the                    day of  
 18                   , until payment; besides sheriff's poundage, officers' fees, costs of  
 levying, and all other legal incidental expenses.

This writ was issued by

of

agent for

of

solicitor for the

The                    is a                    and resides

at

in your bailiwick.

No. 177.

*Writ of Venditioni Exponas.*

(See R. Sup. C., Appendix F, Form 8.)

[Title, &c.]

Victoria, &c.

To the sheriff of                    greeting.

Whereas by our writ we lately commanded you that of the goods and  
 chattels (*making the necessary variations of this form throughout in  
 the case of lands and tenements*) of C. D. [*here recite the fieri facias in  
 the end*]. And on the                    day of                    you returned to our Justices  
 in the                    Division of our High Court of Justice aforesaid, that by  
 virtue of the said writ to you directed you had taken goods and chattels  
 of the said C. D. to the value of the money and interest aforesaid, which  
 said goods and chattels remained in your hands unsold for want of buyers.  
 Therefore, we being desirous that the said A. B. should be satisfied his  
 money and interest aforesaid, command you that you expose to sale and  
 sell, or cause to be sold, the goods and chattels of the said C. D., by you  
 in form aforesaid taken, and every part thereof, for the best price that  
 can be gotten for the same, and have the money arising from such sale  
 before our Justices aforesaid, at                    immediately after the execution  
 thereof, to be paid to the said A. B. And have there then this writ.

Witness, &c.,

, the

day of

18

No. 178.

*Writ of Possession.*

(See *Ib.*, Form 7.)

[Title, &c.]

Victoria,, &c.,

to the sheriff of

, greeting.

Whereas lately in our High Court of Justice, by a judgment of the

Division of the same Court [*A. B. recovered*] or [*E. F. was  
 ordered to deliver to A. B.] possession of all that                    with the  
 appurtenances in your bailiwick: Therefore, we command you that you  
 enter the same, and without delay cause the said A. B. to have posses-  
 sion of the said land and premises with the appurtenances, and that you  
 defend and keep him and his assigns in peaceable and quiet possession  
 when and as often as any interruption may or shall, from time to time,  
 be given or offered to them or any of them. Witness, etc.*

No. 179.

*Writ of Delivery.**(See Ib., Form 8.)*

[Title, &amp;c.]

Victoria, &c., to the sheriff of  
 greeting: We command you, that without delay you cause the following  
 chattels, that is to say [*here enumerate the chattels recovered by the  
 judgment for the return of which execution has been ordered to issue*],  
 to be returned to *A. B.*, which the said *A. B.* lately in our  
 recovered against *C. D.* [*or C. D. was ordered to deliver to the said  
 A. B.*] in an action in the Division of our said Court.\* And  
 we further command you, that if the said chattels cannot be found in  
 your bailiwick, you distrain the said *C. D.* by all his lands and chattels  
 in your bailiwick, so that neither the said *C. D.* nor any one for him do  
 [pay hands on the same until the said *C. D.* render to the said *A. B.* the  
 said chattels; and in what manner you shall have executed this our  
 writ make appear to the Justices of the Division of our High  
 Court of Justice at Toronto, immediately after the execution hereof, and  
 have you there then this writ. Witness, etc.

No. 180. *The Like, but instead of a Distress until the Chattel is re-  
 turned, commanding the Sheriff to levy on the Defendant's  
 goods the assessed Value of it.*

[Proceed as in the preceding form until the\*, and then thus:]

And we further command you that if the said chattels cannot be found in  
 your bailiwick, of the goods and chattels of the said *C. D.* in your baili-  
 wick you cause to be made \$ [the assessed value of the chat-  
 tels,] and in what manner you shall have executed this our writ make  
 appear to the Judges of the Division of our High Court of  
 Justice at Toronto, immediately after the execution hereof, and have you  
 here then this writ. Witness, etc.

No. 181.

*Writ of Attachment.**(See Ib., Form 9.)*

[Title, &amp;c.]

Victoria, etc.,

To the sheriff of , greeting :

We command you to attach *C. D.* so as to have him before us in the  
 Division of our High Court of Justice there to answer to  
 us, as well touching a contempt which he it is alleged hath committed  
 against us, as also such other matters as shall be then and there laid to  
 his charge, and further to perform and abide such order as our said  
 Court shall make in this behalf, and hereof fail not, and bring this writ  
 with you. Witness, etc.

No. 182.

*Writ of Sequestration,**(See Ib., Form 10.)*

[Title, &amp;c.]

Victoria, etc.,

To the sheriff of , greeting :

Whereas lately in the Division of our High Court of Justice  
 in a certain action there depending, wherein *A. B.* is plaintiff and *C. D.*  
 and others are defendants [*or, in a certain matter there depending intituled  
 "In the matter of E. F., as the case may be*] by a judgment [*or order as  
 the case may be*] of our said Court made in the said action [*or matter*], and  
 bearing date the day of 18 , it was ordered  
 that the said *C. D.* should [pay into Court to the credit of the said action the  
 sum of \$ ; *or, as the case may be*]. Know ye, therefore, that we have  
 given, and by these presents do give, to you full power and authority to enter  
 upon all the lands, tenements and real estate whatsoever of the said *C.  
 D.*, and to collect, receive and sequester into your hands, not only all the  
 rents and profits of his said lands, tenements and real estate, but also all  
 his goods, chattels and personal estates whatsoever; and therefore we com-  
 mand you, that you do at certain proper and convenient days and hours,  
 go to and enter upon all the lands, tenements and real estates of the said

C. D., and that you do collect, take and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall pay into Court, to the credit of the said action, the sum of \$ [or, as the case may be,] clear his contempt, and our said Court make other order to the contrary. Witness, &c.

No. 183. Delivery or Assessed Value of Chattels.

(See R. Sup. C., April 1880, Form F, 11.)

[Title, &c.]

Victoria, etc., to the sheriff of greeting.

We command you that without delay you cause to be returned to the following chattels, namely (Enumerate chattels recovered by judgment for the return of which execution has been order to issue,) which the said lately (recovered against or was ordered to deliver to the said,) in an action in our High Court of Justice.

And we further command you that if the said chattels cannot be found in your bailiwick then of the goods and chattels of the said in your bailiwick you cause to be made, the assessed value of the chattels) And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof. And have there then this writ.

Witness, &c.

Indorsements.

If the chattels cannot be found in your bailiwick, levy \$ the assessed value thereof, and interest thereon at 6 per centum per annum from the day of 18 until payment, besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by of agent for of solicitor to the who reside] at

The defendant is a and resides at in your bailiwick.

No. 184. Warrant for arrest of a defaulting witness.

Province of Ontario. } County of

Between A. B., Plaintiff, and C. D., Defendant.

To E. F.

Whereas proof has been made before me that H. N. was duly subpoenaed to give evidence on behalf of the plaintiff (or as the case may be), in the above cause at the sittings of the Court of Assize (or as the case may be), at Toronto (or as the case may be, which commenced on the day of 18 ); that the presence of the said H. N., is material to the ends of Justice ; and that the said H. N. has failed to attend in accordance with the requirements of the subpoena.

These are therefore to command you to take the said H. N., and to bring and have him before me at the said sittings, or before such other Judge as may be presiding thereat, there to testify what he may know concerning the matters in question in the said cause, and that you detain him in your custody until he shall have given his evidence, or until the said sittings shall have ended, or until other order be made by the Court concerning him.

Given under my hand, this day of A.D. 18 , at

J. J. M.



**BILL.**

An Act to consolidate the Superior Courts; establish a uniform system of pleading and practice; and make further provision for the due Administration of Justice.

*(Reprinted as amended.)*

First Reading, \_\_\_\_\_, 1881.

The ATTORNEY-GENERAL.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Jurors' Act of 1879.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Sub-section four of section eleven of the Act passed in 42 Vic., c. 14,  
5 the forty-second year of Her Majesty's reign and chaptered s. 11, sub-s. 4,  
fourteen, is hereby amended, by repealing all the words be- amended.  
tween the word "letter" in the sixth-line, and the words,  
"the selectors" in the seventh line, and substituting the follow-  
ing instead, thereof: "but shall not select from the names of  
10 any persons that were written down, and selected from, or  
returned the preceding year."
2. Sub-section two, of section thirteen of the aforesaid Act S. 13, sub-s. 2,  
is hereby amended by adding the following words thereto: amended.  
"and when the names in any letter have not been exhausted  
15 in any one year, the clerk of the municipality shall enter in  
such book the names and additions of all persons that were  
written down, and selected from, or returned during the then  
current year."

BILL.

An Act to amend the Jurors' Act of 1879.

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First Reading, 19th January, 1881.

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MR. WATERS.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Jurors' Act of 1879.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Sub-section four of section eleven of the Act passed in 42 Vic., c. 14,  
5 the forty-second year of Her Majesty's reign and chaptered s. 11, sub-s. 4,  
fourteen, is hereby amended, by repealing all the words amended.  
between the word "letter" in the sixth-line, and the words,  
"the selectors" in the seventh line, and substituting the follow-  
ing instead, thereof: "but shall not select from the names of  
10 any persons that were written down, and selected from, and  
returned the preceding year."
2. Sub-section two, of section thirteen of the aforesaid Act Sec.13, sub-s.2,  
is hereby amended by adding the following words thereto: amended.  
"and when the names in any letter have not been exhausted  
15 in any one year, the clerk of the municipality shall enter in  
such book the names and additions of all persons *whose names*  
*begin with the last mentioned letter* that were written down,  
and selected from, and returned during the then current year."
3. Sub-section five of section eleven of the Jurors' Act of Sub-s. 5 of s.  
20 1879 shall be read and construed as though it were sub-section 11 to be read  
two of section fourteen of said Act, instead of sub-section five as sub-s. 2 of s.  
of said section eleven. 14.
4. Section twelve of the Jurors' Act of 1879 is amended Sec. 12 amend-  
by inserting after the word "age," in the the sixth line thereof, ed.  
25 the following: "and who is not exempt or disqualified and." 

BILL.

An Act to amend the Jurors' Act of 1879.

*(Reprinted as amended.)*

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First Reading, 19th January, 1881.

Second " 2nd February, 1881.

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MR. WATERS.

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TORONTO:

PRINTED BY G. BLACKETT ROBINSON.

## An Act respecting Ditching Water-courses.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. Sub-section one of section four of chapter one hundred and ninety-nine, of the Revised Statutes, is hereby repealed, and the following substituted therefor:—
- (1) Either owner may notify (form 1) the other owner or owners, or the occupant or occupants of the lands of the owner or owners so to be notified, that he will, not less than one week from the service of such notice, cause three fence-viewers of the locality to arbitrate in the premises.
2. Section six of said Act is amended by adding thereto the words, "And such fence-viewers, or either of them, shall be liable to a penalty of five dollars each for non-attendance at such arbitration, unless such non-attendance be unavoidable or otherwise justifiable."
3. Section ten of said Act is amended by adding thereto the words, "Provided, that should the value and costs of the work herein referred to exceed the amount recoverable in the division court, then the action for the recovery thereof may be taken in a county court or in any of the superior courts, as the case may be."
4. Section eleven of said Act is amended by adding thereto the words, "Provided that, should no appeal be made from such award, as provided for in sub-section one of section twelve of said Act, a return of such expenses shall forthwith be made by such fence-viewers to the council of the corporation in which they act, who shall pay such expenses or costs to the respective parties entitled thereto, from the funds of the municipality, charging the amounts so paid in the proportion set forth in such award against the land or lands of the party or parties affected by such award, and the amount so charged shall be levied and collected from such lands in the same way as other taxes."
5. Section eight of the Act passed in the forty-third year of Her Majesty's reign, and chaptered thirty, is amended by adding thereto the following words: "Where lands affected by such award lie in several or adjacent municipalities, copies of such award, duly signed by such arbitrators, shall be sent to the clerk of each municipality affected thereby; the provision in

R. S. O. c. 199,  
s. 4, sub-s. 1,  
repealed, and  
new sub-s.  
substituted.

S. 6 amended.

S. 10 amended.

S. 11 amended.

43 V. c. 30, s. 8,  
amended.

respect to such award, made by section nine of chapter one hundred and ninety-nine of the Revised Statutes, and in respect to the expenses thereof, provided for by section eleven of the said Revised Statute, as amended, to be made applicable to and obligatory on each municipal corporation so affected: 5  
 Provided, also, that in case of appeal from the arbitrators' award, the action on such appeal shall be tried in the county in which the appealing party or parties' lands are located."

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2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act respecting Ditching Water-courses.

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First Reading, 20th January, 1881.

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Mr. HAY.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Municipal Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1 It shall be lawful for the council of any county to provide  
 5 for reducing the number of the members thereof, by passing a  
 by-law declaring, that, after the then current year, no deputy-  
 reeves shall be members thereof.

County council may by by-law exclude deputy-reeves.

2. In the event of deputy-reeves being excluded by by-law  
 from being members of the council of any county, then the  
 10 reeve of each township, village and town within such county,  
 which would be entitled to send one or more deputy-reeves to  
 the council of such county, shall be entitled on all questions  
 before such council to cast one vote in addition to his own vote,  
 if the municipality for which he is reeve had the names of  
 15 five hundred freeholders and householders on the last revised  
 assessment roll, possessing the same property qualification as  
 voters (notwithstanding that such person may not be entitled  
 to vote), and shall be also entitled to cast one further vote in  
 addition to his own for every additional five hundred names of  
 20 persons possessing the same property qualification as voters on  
 such roll (notwithstanding that such persons may not be en-  
 titled to be voters); and for the purpose of forming a quorum  
 of any county council, either for the election of a warden or for  
 any other business, each reeve entitled to cast a vote or votes  
 25 in addition to his own vote, shall be reckoned as representing  
 one additional member of such county council for each of such  
 additional votes.

If deputy-reeves excluded, reeves to have additional votes.

3. No reeve shall be entitled to cast a vote in addition to  
 his own vote in any county council, until he has filed with the  
 30 clerk of the county, an affirmation or declaration of the clerk  
 or other person having the legal custody of the last revised  
 assessment rolls of the municipality which he represents, that  
 there appear on such rolls, the names of at least five hundred  
 freeholders and householders in the municipality possessing  
 35 the same property qualification as voters, for each additional  
 vote of such reeve.

Declaration to be filed to entitle reeve to additional votes.

2nd Session, 4th Legislature, 44 Vic, 1881

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BILL.

An Act to amend the Municipal Act.

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First Reading, 20th January, 1881.

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Mr. COOK.

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TORONTO:

PRINTED BY C. BLACKWELL ROBINSON.

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No. 74.]

**BILL.**

[1881.

An Act to amend the Assessment Act.

**H**ER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows:—

1. Sub-section twenty of section six of "The Assessment  
5 Act" is hereby amended by striking out the words "on account  
of such property" in the second and third lines thereof.

R. S. O., c.  
180, s. 6, sub-s.  
20, amended.

No. 174.

2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to amend the Assessment Act.

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First Reading, 20th January, 1881.

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Mr. CALVIN.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to amend the Act respecting Ditching Water-courses.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section six, of chapter one hundred and ninety-nine, of the Revised Statutes of Ontario, is hereby repealed, and the following section substituted in lieu thereof:— R. S. O., c. 199, s. 6, repealed.

6. The fence-viewers shall examine the premises, and if required by either party, they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer an oath or affirmation, as in courts of law; and may, if they see fit, apportion to the several owners thereof interested in the opening up of such ditch, drain, or water-course, a just and fair proportion of the work to be done, and shall also determine the locality, and size of such ditch, or drain, and the value of the work to be performed by each or either of the parties, either by fixing the amount at so much per rod, or cubic yard, or otherwise, and also the time in which the work is to be completed. Duties of fence-viewers.

(1) And when any one or more of the parties interested neglects or refuses to make and complete the portion of such ditch, or drain, as awarded to them by the fence-viewers, the party or parties completing the same (as provided in section ten of the said revised statute), shall notify the fence-viewers that the work has been completed; the fence-viewers shall, within six days after receiving such notice, examine the premises, and if the work is done in accordance with the award, they shall give the party or parties performing the same, a certificate setting forth that the work has been done, and also, stating the amount that the party or parties are entitled to recover; and such certificate shall be deposited with the clerk of the division court when the suit is entered, and such certificate shall be received by such court as prima facie evidence that the work has been performed in accordance with the award. Proceedings when work completed.

3. Section seven of the said revised statute is hereby repealed, and the following section substituted in lieu thereof:— Section 7 repealed.

7. The fence-viewers shall make an award (form three) in writing, signed by any two of them, respecting the matters so in dispute, which award shall specify the locality, size and description of the ditch or drain it orders to be made, the proportion of such ditch or drain that may be apportioned to each or either of the parties to complete, and the value of the work to be performed by each or either of the parties, by stating a sum at so much per rod, cubic yard, or otherwise, and the time within which the work shall be completed; and shall also state by which of the said parties the costs of the arbitration shall be paid, and at what time, or whether either party shall pay some proportion of such costs: Provided, also, that the award (form three) shall correspond with this section. Awards. Contents.

BILL.

An Act to amend the Act respecting Ditch-  
ing Water-courses.

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First Reading, 21st January, 1881.

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Mr. WATERS.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act respecting Interpleader.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. When the amount claimed under or by virtue of an execution, or of an attachment against an absconding debtor in the sheriff's or other officer's hands, issued out of one of the superior courts of law, does not exceed the sum of four hundred dollars, exclusive of interest and sheriff's or other officer's costs, the order directing an issue to be tried, may direct that the issue shall be drawn up and tried in the county court, and in such case the issue shall be drawn up and tried in the county court, and all subsequent proceedings therein, up to and inclusive of judgment and execution, shall be had and taken in the county court, which shall have jurisdiction in the premises as fully as though the writ of execution or attachment had issued out of a county court. When issue may be tried in county court.
2. The proceedings for and relating to the order for costs, and for obtaining money out of court, when the same has been paid into court by the sheriff, and for such other purposes as may be necessary, may, in the cases provided for in the foregoing section, be made to the judge of the county court who tried the issue, and he shall have power and authority to make such order in the premises as shall be in accordance with the justice of the case, but the application for such order may be made as now in the original cause. Order for costs to be made by judge of county court.
3. In respect of all such proceedings as shall under the first section of this Act be had in the county court, the costs and disbursements shall be taxed upon the county court scale. Costs to be on county court scale.

BILL.

An Act respecting Interpleader.

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First Reading, 21st January, 1881.

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Mr. HARDY.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act respecting Interpleader.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. When the amount claimed under or by virtue of an execution, or of an attachment against an absconding debtor in the sheriff's or other officer's hands, issued out of one of the superior courts of law, does not exceed the sum of four hundred dollars, exclusive of interest and sheriff's or other officer's costs, ~~or~~ or when the goods seized are not, in the opinion of the judge, or other persons making the order, of the value of more than four hundred dollars ~~the~~ the order directing an issue to be tried, may direct that the issue shall be drawn up and tried in the county court, ~~of~~ of the county in which the issue would, under the provisions of section twenty-two of the Interpleader Act, be tried ~~and~~ and in such case the issue shall be drawn up and tried in the county court, and all subsequent proceedings therein, up to and inclusive of judgment and execution, shall be had and taken in the county court, which shall have jurisdiction in the premises as fully as though the writ of execution or attachment had issued out of a county court. ~~When~~ When an application is made for an order, under this section, upon the ground that the goods seized are not of the value of more than four hundred dollars, a list of the goods and of the value placed upon them shall be set out in the affidavit, or affidavits, upon which the application is based.
2. The proceedings for and relating to the order for costs, and for obtaining money out of court, when the same has been paid into court by the sheriff, and for such other purposes as may be necessary, may, in the cases provided for in the foregoing section, be made to the judge of the county court who tried the issue, and he shall have power and authority to make such order in the premises as shall be in accordance with the justice of the case, but the application for such order may be made as now in the original cause.
3. In respect of all such proceedings as shall under the first section of this Act be had in the county court, the costs and disbursements shall be taxed upon the county court scale.

When issue may be tried in county court.

Order for costs to be made by judge of county court.

Costs to be on county court scale.

No. 76.

2nd Session, 4th Legislature, 44 Vic., 1881.

BILL.

An Act respecting Interpleader.

*(Reprinted as amended.)*

First Reading, 21st January, 1881.

Second " 1st February, "

Mr. HARDY.

TORONTO :

PRINTED BY C. BLACKETT ROBINSON.

An Act to regulate the precedence of Counsel practising in the Courts of the Province of Ontario, and for other purposes.

**W**HEREAS it is undesirable that any counsel practising in the courts of the Province of Ontario, should have any advantage or precedence merely by reason of his political opinions, and whereas by reason of the appointment of numerous persons as Queen's counsel on account of their political opinions, without regard to their legal attainments, it has become expedient to abolish any rights of precedence or preaudience heretofore accorded to Her Majesty's counsel while practising in said courts, and to place all counsel on a footing of perfect equality in the eye of the law ;

Preamble.

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. The office of Queen's counsel shall no longer give to any counsel practising in the courts of the Province of Ontario a right of precedence or preaudience or any other right over other counsel not Queen's counsel.

Precedence of Queen's counsel abolished.

2. No counsel shall be heard within the Bar of any of Her Majesty's courts in this Province.

Counsel not to be heard within the bar.

3. No counsel shall hereafter have a larger fee taxed to him merely by reason of his being a Queen's counsel, but all counsel shall be paid according to the value of the work done.

Queen's counsel not so have special counsel fees.

4. Sub-section five of section three, and sections four and five of chapter one hundred and thirty-nine of the Revised Statutes are hereby repealed.

R. S. O., c. 139, s. 3, sub-s. 5, and ss. 4 and 5 repealed.

5. Section six of the said Revised Statute is amended by striking out the word "remaining" in the first line thereof.

S. 6 amended.

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2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to regulate the precedence of Counsel practising in the Courts of the Province of Ontario, and for other purposes.

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First Reading, 24th January, 1881.

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Mr. MONK.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to amend the Municipal Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly, of the Province of Ontario, enacts as follows:—

1. Section four hundred and ninty-one, of chapter one R. S. O., c. 174,  
5 hundred and seventy-four, of the Revised Statutes of Ontario, s. 491, repeal-  
is hereby repealed, and the following section substituted there- ed.  
for:—

491. Every public road, street, bridge, and highway, shall be Repairing  
kept in repair by the corporation, and in default of the corpora- public roads.  
10 tion so to keep in repair, the corporation shall, besides being Liability for  
subject to any punishment provided by law, be liable for all damages.  
damages sustained by any person by reason of such default ; and  
such corporation shall also be liable for all damages sustained  
15 by any person, on account of having houses or lands flooded  
through, and by, the construction of any public road, street,  
bridge, culvert, or highway ; but any claim for such damages  
must be lodged with the clerk, or head of the corporation,  
within three months after the damages have been sustained,  
20 and if not mutually agreed upon shall be settled by arbitration,  
under the provisions of the Municipal Act, notwithstanding  
anything in the said Act to the contrary.

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2nd Session, 4th Legislature, 44 Vic, 1881.

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BILL.

An Act to amend the Municipal Act.

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First Reading, 24th January, 1881.

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Mr. WATERS.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Municipal Act.

WHEREAS the publication of by-laws for drainage purposes in newspapers is attended with large and frequently unnecessary expense, and it is desirable to amend the said Act respecting the same; Preamble.

5 Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section five hundred and thirty-one, following section twenty-seven of the Municipal Amendment Act of 1879, shall have added thereto the following:— R. S. O., c. 174, s. 531;  
(42 V., c. 31, s. 27) amended.

15 “Or the said council may at their option, instead of such publication in a newspaper, direct that a copy of such by-law and notice, written or printed, or partly written and partly printed, be given to each of the several owners, their lessees or occupants, or to the agent or agents of such owners; or may, where the land is unoccupied, cause to be sent by registered letter to the last known address of such owner or owners a copy of such by-law and notice.”

BILL.

An Act to amend the Municipal Act.

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First Reading, 25th January, 1881.

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Mr. McCraney.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

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No. 80.]

**BILL.**

[1881.

An Act to amend the Act respecting the Registration  
of Co-partnerships and Business Firms.

**H**ER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows:—

The eleventh section of the Revised Statute respecting the R.S.O., c. 143,  
5 registration of co-partnerships and business firms, is hereby s. 11, amended,  
amended by inserting after the word "partnership" in the  
first line of the said section the words "or other person requir-  
ed to register a declaration under the provisions of this Act."

BILL.

An Act to amend the Act respecting the  
Registration of Co-partnerships and Busi-  
ness Firms.

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First Reading, 25th January, 1881.

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The ATTORNEY-GENERAL.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

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No. 81.]

**BILL.**

[1881.

An Act to amend the Registry Act.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section sixty-nine of the Registry Act, chapter one hundred and eleven of the Revised Statutes, is hereby amended by striking out the words “and executed as hereinafter mentioned” in the fifth line of the said section, and by adding at the end thereof the following: “and it shall not be necessary to the validity of any such certificate of discharge of mortgage given by a married woman that the husband of such married woman should be a party to or should execute the same.”
- R. S. O., cap. 111, s. 69, amended.

No. 81.

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2nd Session, 4th Legislature, 44 Vic, 1881

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BILL.

An Act to amend the Registry Act.

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First Reading, 27th January, 1881.

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Mr. HARCOURT.

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TORONTO :

PRINTED BY C. BLACKWELL ROBINSON.

## An Act to amend the Registry Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section sixty-nine of the Registry Act, chapter one hundred and eleven of the Revised Statutes, is hereby amended by striking out the words "and executed as hereinafter mentioned" in the fifth line of the said section, and by adding at the end thereof the following: "and it shall not be necessary to the validity of any such certificate of discharge of mortgage given by a married woman that the husband of such married woman should be a party to or should execute the same; and it is hereby declared that any discharge of mortgage heretofore executed by a married woman alone (and duly registered) shall be as effectual to discharge such mortgage and to reconvey all the estate of such married woman in the mortgaged lands as if the same had been executed by the husband and wife jointly."

R. S. O., cap. 111, s. 69, amended.

2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to amend the Registry Act.

*(Reprinted as amended.)*

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First Reading, 27th January, 1881.

Second " 2nd February, 1881.

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•  
Mr. HARCOURT.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

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No. 83.]

# BILL.

[1881.

An Act to amend the Assessment Act.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Sub-section twenty-one of section six, of chapter one hundred and eighty of the Revised Statutes of Ontario, is hereby repealed, and the following substituted in lieu thereof:—

R. S. O., cap. 180, s. 6, sub-s 21, repealed.

(21) The council of every city, town, township, and incorporated village, shall have the power to exempt from taxation, either in part or in whole, any poor or indigent person, although such person may be assessed for real or personal property.

Council may exempt poor persons.

BILL.

An Act to amend the Assessment Act.

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First Reading, 27th January, 1881.

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MR. WATERS.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Municipal and Assessment Acts.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section three hundred and fifty-eight of the Municipal Act is hereby repealed, and the following substituted in lieu thereof:—

R. S. O., c. 174, s. 358, repealed and new section substituted.

If any part of the produce of the special rate levied in respect of any debt, and at the credit of the sinking fund account, or of the special rate account thereof, cannot be immediately applied towards paying the debt, by reason of no part thereof being yet payable, the council shall, from time to time, invest the same in government securities, municipal debentures, or in first mortgages on real estate held and used for farming purposes, and being the first lien on such real estate, or otherwise as the Lieutenant-Governor in Council may direct; and from time to time, as such securities mature, may invest in other like securities; no sum so invested in mortgages shall exceed two-thirds of the value of the real estate on which it is secured according to the last revised and corrected assessment roll at the time it is invested;

Surplus of special rate or sinking fund may be invested.

(2) The council of such municipality shall have power to regulate, by by-law, the manner in which such investments shall be made.

Council to regulate manner of investing.

2. The following shall be added to section ninety-three of the Assessment Act, as sub-section two:—

R. S. O., c. 180, s. 93, amended.

If at any time after demand has been made by the collector as aforesaid, and before the expiry of the fourteen days mentioned in this section, the collector has good reason to believe that any party by whom taxes are payable, is about to remove his goods and chattels out of the municipality before the fourteen days has expired, and makes affidavit to that effect, before the mayor or reeve of the municipality, or before any justice of the peace, such mayor, reeve or justice shall issue a warrant to the collector, authorizing him to levy for the taxes and costs, in the manner provided by this Act, although the fourteen days after demand may not have expired.

BILL.

An Act to amend the Municipal and Assessment Acts.

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First Reading, 2nd February, 1881.

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Mr. ROSS.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to amend the Act respecting investments in  
Tile Drainage Debentures.

HER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows :

1. The second section of the Ontario Tile Drainage Act <sup>41 Vic., cap. 9,</sup>  
5 passed in the forty-first year of Her Majesty's reign, and chap- <sub>§. 2 amended.</sub>  
tered nine, is amended, by striking out the word "ten," in the  
third line of said section, and substituting therefor the word  
"twenty," and by striking out the word "five," in the eighth  
line, and substituting therefor the word "four."
- 10 2. The fourth section of the said Act is amended by striking <sup>Sec. 4 amend-</sup>  
out the word "eight," in the fourth line thereof, and substitu- <sub>ed.</sub>  
ting therefor the word "seven."
- 15 3. The thirteenth section of the said Act is amended, by <sup>Sec. 13 amend-</sup>  
striking out the words "one thousand" and substituting therefor <sub>ed.</sub>  
the words "two hundred," and by adding at the end of the  
said section the words "for each hundred acres; and in no case  
shall more than four hundred dollars be loaned to one person."
- 20 4. Section fifteen is amended by adding after the word <sup>Sec. 15 amend-</sup>  
"expenses," in the third line of said section, the words "and all <sub>ed.</sub>  
other expenses incidental to the loans."

BILL.

An Act to amend the Acts respecting investments in Tile Drainage Debentures.

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First Reading, 2nd February, 1881.

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MT. CASCADEN.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Election Act of Ontario.

HER Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:--

1. No nomination shall be valid or acted upon by the re-  
 5 turning officer unless it be accompanied by a consent, in writing, signed by the person nominated in the presence of two credible witnesses, and such consent shall be in the form "A" to this Act, and shall be delivered to the returning officer previous to the close of the proceedings: Provided always  
 10 that if the person nominated be absent from the Dominion of Canada, an affidavit stating such absence may be delivered to the returning officer in lieu of this said consent. Consent of candidate to his nomination.
2. No nomination shall be valid or acted upon by the re-  
 15 turning officer unless a sum of fifty dollars be paid to the returning officer, at the time of each nomination, by the person nominated, or some person or persons on his behalf. Deposit to be made with returning officer.
3. The sums so paid shall be disposed of as follows:--Every  
 20 successful candidate, according to the subsequent return of the returning officer, shall receive the sum paid in by him, and the other sum or sums paid in shall be applied by the returning officer towards the payment of the election expenses. Application of deposits.

## FORM "A."

I do hereby consent to be nominated as a candidate for the representation of the \_\_\_\_\_ of \_\_\_\_\_ in the Legislative Assembly of the Province of Ontario, at the nomination to be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 .

Signed in the presence of }

2nd Session, 4th Legislature, 44 Vic, 1881.

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BILL.

An Act to amend the Election Act of  
Ontario.

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First Reading, 28th January, 1881.

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Mr. MONK.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

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No. 87.]

**BILL.**

[1881.

An Act to amend the Act to impose a Tax on Dogs,  
and for the protection of Sheep.

**H**ER MAJESTY, by and with the advice of the Legislative  
Assembly of the Province of Ontario, enacts as follows:

Chapter one hundred and ninety-four of the Revised Sta- R. S. O., c.  
tutes, is hereby amended, by adding thereto the following as 194, s. 2,  
5 sub-section three of section two:— amended.

(3) In case the council of any city or town separated from  
a county, deems it advisable to dispense with the levy of the  
said tax, it shall be lawful for such council to declare by by-  
law that the said tax shall not be levied within its jurisdic-  
10 tion.

2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to amend the Act to impose a Tax  
on Dogs, and for the protection of Sheep.

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First Reading, 28th January, 1881.

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Mr. LAIDLAW.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

# BILL.

## An Act to consolidate the County and Division Courts.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. From and after the Consolidation of courts.

5 the county court and the several division courts in each county shall be united and consolidated together and shall thereafter constitute one county court for each county.
2. Each of the said county courts shall consist of as many Divisions of courts.

10 divisions as there are now division courts in the county, and the limits of such divisions shall be the same as at present constituted.
3. The clerks of the county court shall hereafter be called Registrars of county courts.

15 registrars of the county court, and shall be paid an annual salary, to be hereafter fixed by the Lieutenant-Governor in Council, in lieu of all fees heretofore received by them, and shall in addition to their other duties perform the duties imposed by this Act, or by rules to be made in pursuance of this Act.
4. The clerks and bailiffs of the division courts shall con- Clerks and bailiffs.

20 tinue in office, and shall be known as clerks of the county court and bailiffs for the respective divisions of the county court.
5. The bailiffs of the county courts shall be officers of Duties of bailiffs.

25 the sheriff of the county in which the court of which they are bailiffs is situated, and shall perform all reasonable duties for the sheriff in their respective divisions, and such duties as are assigned to them by this Act, or by the rules of court to be made in pursuance of this Act, and shall be paid for their services by and through the sheriff, to whom they shall account

30 for all fees collected by them.
6. The said county courts shall be courts of record and Jurisdiction of courts.

shall have the jurisdiction which at the commencement of this Act was vested in or capable of being exercised by the respective county and division courts in the respective counties.
7. In all causes, matters and proceedings whatsoever, in Pending business.

35 which judgment shall not have been entered or satisfied or execution issued, proceedings up to and inclusive of such judgment, execution or satisfaction shall be the same as if this Act had not been passed, subject to any rules to be made under this

40 Act.

Law and equity to be administered as in the high court.

8. In every cause or matter commenced in the county court, law and equity shall be administered by the said courts respectively, according to rules observed in the high court.

Transfer of causes.

9. Any cause or matter may at any time and at any stage thereof, and either with or without application from any of the parties thereto, be transferred from one division of a county court to any other division of the same county court, or to a division of the county court of some other county, by such authority and in such manner as rules of court may direct, or as transfers might be made from one county court to another county court, or from one division court to another, before the passing of this Act; or, the same may, by the like authority, be retained in the division in which the same was commenced, although such may not be the proper division in which the same cause or matter ought, in the first instance, to have been instituted.

Sittings of the courts.

10. There shall be sittings of the said county court at the same places and as often every year as heretofore of the respective division courts, and oftener, if the due dispatch of business requires.

Practice and procedure.

11. The practice and procedure in the respective county courts and the respective divisions thereof shall be as nearly as may be the practice and procedure heretofore in force in the division courts, subject to rules of court as aforesaid, and the Division Courts Act, as far as applicable, is to be applied to the working out and giving effect to this Act.

Rules of court.

12. At any time after the passing, and before the commencement of this Act, the board of county court judges, in addition to the authority vested in them by the Division Courts Act, shall make rules of court for carrying this Act into effect, and in particular for all or any of the following matters, that is to say:—

(1) For regulating the practice and procedure in the county courts;

(2) The duties of the registrar, sheriff, bailiffs, and any other officers as to unfinished and new business, and the books to be kept;

(3) The costs of proceedings, and to fix a tariff for clerks, sheriffs, bailiffs, attorneys, and also a tariff to be taken and allowed to counsel.

Appeals.

13. Appeals to the court of appeal shall be allowed as at present, in all county court cases; but, in actions for debt, money demand, or damages, the matter in dispute must exceed one hundred dollars.

Duties of registrars.

14. The registrar of each county court shall attend all the sittings of the courts in the county, and shall officiate thereat as registrar, and shall have such supervisory power over the clerks of the different divisions as rules of court to be made hereunder shall provide.

Proceedings to be transmitted by clerks to the registrar.

15. Once in each year, at least, the clerk of each division shall transmit all records and proceedings had in his office to the registrar, in such form and manner as may be provided by rule, to the end and intent, that there may be one complete court of record for each county.

16. During the absence of the registrar from his office, on circuit or otherwise, the clerk of the division of the county court in which the county town is situated, shall perform the duties and shall be vested with all the authority and functions of the registrar of the county court, as such registrar, and as deputy clerk of the crown, registrar of the surrogate court, clerk of assize, and any other office connected with any court held by such registrar.

Provision for  
absence of  
registrar.

17. Section seventy-one, of chapter one hundred and sixty-one, of the revised statutes of Ontario, is hereby repealed.

R. S. O., c.  
161, s. 71,  
repealed.

18. The provisions of the Interpleader Act shall, so far as applicable, apply to the county court, and every division thereof, although the cause of action or contestation may have heretofore been within the jurisdiction of the division courts.

Interpleader  
Act to apply.

19. Garnishee proceedings may be taken under the Division Courts Act, in the county courts, notwithstanding that the garnishee may reside without the Province, or in case of incorporated companies, that they may have their head office or chief place of business elsewhere than in this Province, and the process may be served as process against companies is served, or otherwise, as rules of court may direct.

Garnishee pro-  
ceedings.

No. 88.

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2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to consolidate the County and  
Division Courts.

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First Reading, 28th January, 1881.

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Mr. FRENCH.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Municipal Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The following shall be added to section one hundred and twelve of the Municipal Act, as sub-section two:—

R. S. O., c.  
174, s. 112,  
amended.

(2) Every person nominated to fill an office at the meeting for the nomination of candidates shall deposit, or cause to be deposited, with the returning officer before the close of such nomination meeting, the sum of five dollars, to be returned to him in the event of his being elected, or declared entitled to fill the office for which he is nominated, otherwise the same is to be applied by the returning officer towards the payment of the election expenses.

2. Section one hundred and sixty-five, of the said Act, is hereby amended by adding thereto the following words:—

Sec. 165  
amended.

Provided always that no candidate shall be present at the marking of a ballot by an incapacitated voter, under section one hundred and forty-four.

3. Section one hundred and fifty-eight, of the said Act, is amended by adding thereto the following words:—

Sec 158  
amended.

Provided that the said judge, upon being satisfied that there is reasonable ground to suspect any fraud or fraudulent practice in said election, or any infringement of the said Act, may order a general inspection of the several packets, or any of them, made up under section one hundred and fifty.

The voters' lists and the records kept under section one hundred and forty, and returned under section one hundred and fifty, shall be *prima facie* evidence of the fact whether any voter has voted, or abstained from voting, or whether he has voted more than once, and how often, contrary to section one hundred and thirty-six of said Act.

Any order hereunder may be made without the formal institution of legal proceedings, the judge being first satisfied of the good faith of the application.

2nd Session, 4th Legislature, 44 Vic, 1881.

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BILL.

An Act to amend the Municipal Act.

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First Reading, 28th January, 1881.

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MR. FRENCH.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON

## An Act to further amend the Division Courts Act.

HER Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Section eighty-three of the Division Courts Act, chapter 5 forty-seven of the Revised Statutes, is hereby repealed, and the following substituted therefor :—

83. In case the judge thinks it conducive to the ends of justice, he may adjourn the hearing of any cause or order, to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable such party to enter more fully into his case or defence, or for any other cause which the judge thinks reasonable; and in every case in which any party to any suit entered for trial at any such court applies for such adjournment, stating upon affidavit his belief that he will not obtain a fair and impartial hearing of his case before the presiding judge, it shall be the duty of such judge to adjourn the hearing of said cause and order the same to be heard before the other acting judge (if any) of the said court, with as little delay as possible, and if there shall be no such other judge, then to be tried at the earliest convenient sittings of that court of the division in an adjoining county which shall be nearest to the division in which the defendant or one of several defendants resides, or has his or her last place of abode; and every such adjournment of any cause shall be made upon such conditions as to the payment of costs and admission of evidence, or other equitable terms, as to the presiding judge seems meet.

R. S. O., c. 47,  
s. 83 repealed  
and new section substituted.

No. 90.

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2nd Session, 4th Legislature, 44 Vic, 1881.

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BILL.

An Act to further amend the Division  
Courts Act.

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First Reading, 28th January, 1881.

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Mr. ROBERTSON, (*Hathon*).

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON,

An Act to amend the Acts respecting Public and Separate Schools.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. In cities, towns and villages, and in townships where by law a public or separate school board is established, the nominations and elections of public and separate school trustees shall be held at the same time and place, and by the same returning and deputy-returning officers, and shall be conducted in the same manner—voting by ballot—as nominations and elections of councillors or aldermen, and the qualification for either trustees or voters at such elections shall be that of a householder rated upon the last revised assessment roll of the municipality.
2. A separate set of ballot papers shall be prepared for all the wards or electoral divisions, containing the names of the candidates nominated for such public or separate school trustees, of the same form as those used for councillors or aldermen in said municipality, substituting the words public school, or separate school, trustee, for that of alderman or councillor.
3. Elections of public or separate school trustees to fill vacancies caused by death, removal or resignation, shall be conducted in the same manner as elections for councillors or aldermen, to fill vacancies caused in the same manner.
4. Sections twenty-two and twenty-four of the Public School Act, and section twenty-seven of the Separate School Act, are hereby amended, by substituting the “first Monday in January” for the “second Wednesday in January” as the day upon which the trustees referred to in said sections shall retire.
5. In the list of qualified voters required to be delivered to the returning officer by the clerk of the municipality before the opening of the poll, the clerk shall add the names, alphabetically arranged, of all freeholders, householders, or tenants, rated upon the last revised assessment roll, and not being already upon, “the voters’ list,” and shall place opposite the names of those persons in any voters’ list so amended, who have been returned to him as supporters of separate schools, the letters S.S.S., signifying supporters of separate schools, and the returning officers shall deliver to any such a ballot paper for separate school trustees.
6. All Acts or parts of Acts inconsistent with this Act, so far as they affect this Act, but not to any greater extent, are hereby repealed.

Nomination and election of public and separate school trustees.

Ballot papers.

Filling vacancies caused by death.

R. S. O., c. 204, ss. 22 and 24 and R. S. O., c. 206, s. 27, amended.

Separate school supporters to be marked on lists of voters.

Inconsistent enactments repealed.

BILL.

An Act to amend the Acts respecting Public  
and Separate Schools.

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First Reading, 2nd February, 1881.

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Mr. BELL.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to amend the Municipal Act.

**H**ER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows :—

1. Section ninety-one of chapter one hundred and seventy- R. S. O., c. 174,  
5 four of the Revised Statutes of Ontario is hereby amended by s. 91, amended.  
striking out the words "a majority" in the first line thereof  
and substituting therefor the words "one-third."

2. Section one hundred and twelve of the said Act is Sec. 112  
amended by adding thereto the following words "but the amended.  
10 returning officer shall not accept the nomination of any candi-  
date not present unless such nomination is accompanied by a  
consent in writing signed by such candidate."

3. The seventh section of the "Municipal Amendment Act 42 Vic., c. 31,  
of 1879" is hereby repealed. s. 7, repealed.

2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to amend the Municipal Act.

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First Reading, 4th February, 1881.

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Mr. PAXTON.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Municipal Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. The municipal council of every municipality within a  
5 county and under the jurisdiction of the county council shall consist of one reeve who shall be the head thereof and four councillors, to be elected annually. Constitution of councils under jurisdiction of county councils.
2. The county council shall consist of the reeves of the  
different municipalities in the county or union of counties. Constitution of county councils.
- 10 3. The reeve of each municipality shall have a vote equal to the whole number of electors on the last revised list of voters for municipal purposes for the municipality which he represents. Reeve of each municipality to have votes proportioned to population.
4. No reeve shall be entitled to take his seat in the county  
15 council, or to take any part in the proceedings thereof, until he has filed with the county clerk or person acting for him, a certified copy of the last revised voters' list for the municipality which he represents. Reeve to file copy of voters' list with county clerk.
5. All Acts or parts of Acts which are inconsistent with or  
contrary to the provisions of this Act are hereby repealed. Inconsistent enactments repealed.
- 20 6. This Act shall come into force on the                    day of  
one thousand eight hundred and eighty-one. When Act to take effect.

BILL.

An Act to amend the Municipal Act.

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First Reading, 4th February, 1881. |

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Mr. HARKIN.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to give increased efficiency to the laws against the illicit sale of intoxicating liquors.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Section thirty-one of chapter one hundred and eighty-one of the Revised Statutes of Ontario, intituled "The Liquor License Act," is amended as follows :—

Sec. 31, cap. 181, R. S. O., amended.

Sub-section four, of section thirty-one, of the Liquor License Act is repealed, and the following shall be sub-sections four, five and six of said section thirty-one:—

- 10 (4) For each beer and wine license in cities .....\$50 00 Fees for licenses.
- "      "      "      towns. .... 40 00
- "      "      "      other municipi-
- palities..... 30 00
- 15 (5) For each license (other than a beer and wine license),
- for a vessel navigating any of the great lakes or
- the rivers St. Lawrence or Ottawa ..... 100 00
- For each beer and wine license for any such vessel.. 50 00
- For each license (other than a beer or wine license),
- for a vessel navigating the inland waters of the
- 20 Province, other than as aforesaid..... 60 00
- For each beer and wine license for any such last-
- mentioned vessel ..... 30 00
- 25 (6) For every transfer or removal of a license under sections
- twenty-eight and twenty-nine of this Act, five dollars,
- and the mileage of the inspector, as provided by section
- eighteen of this Act.

2. Section thirty-four of the said Act is amended by inserting after the word "license" in the second line the following: "and for transfers and removals thereof."

Sec. 34, cap. 181, R. S. O., amended.

3. The forty-second section of the said Liquor License Act is amended by striking out the words "twelve ounces," where they occur in the fifth and sixth lines thereof, and by substituting therefor the words "four ounces."

Druggists. 42 Sec., cap. 181, R. S. O., amended.

4. The board of license commissioners shall withhold a license from any person who shall while holding a shop-license or whose servants or agents shall be twice convicted in any one year of an offence against the forty-third or fifty-first sections of the Liquor License Act.

Board of commissioners may withhold a shop-license in case of conviction.

5. Section fifty-one of the said Act is amended by striking out all the words thereof after the words "besides costs" in

Sec. 51, cap. 181, R. S. O., amended.

the eighth line thereof, and by substituting therefor the following: "and for the second offence on conviction thereof, such person shall forfeit and pay a penalty of not less than forty dollars, besides costs, and not more than sixty dollars, besides costs, and in default of payment thereof he shall be imprisoned in the county gaol of the county in which the offence was committed, for a period not exceeding two calendar months, and to be kept at hard labour; and for the third or subsequent offence, on conviction thereof, such person shall be imprisoned in such gaol for the period of three calendar months, to be kept at hard labour, and in the event of the imprisonment of any person upon several warrants of commitment under different convictions in pursuance of this Act, whether issued in default of distress for a penalty or otherwise, the terms of imprisonment under such warrants shall be consecutive and not concurrent.

Punishments provided for second and third offences.

Sec. 53, cap. 181, R. S. O., amended.

6. Section fifty-three of the said Act is amended by inserting the words "or without costs" after the word "complainant" in the eleventh line of said section.

Sec. 77, cap. 181, R. S. O., amended.

7. Section seventy-seven of the said Act is amended by striking out all the words after the word "offence" in the tenth line thereof, and inserting instead the following: "and no greater penalty or punishment is imposed than is authorized by this Act."

Sec. 83, cap. 181, R. S. O., amended.

8. Section eighty-three of the said Act is amended by adding thereto the following sub-section:—

Person selling as well as "occupant" to be liable.

(2) The person actually selling, or otherwise contravening any of the provisions of this Act, as in this section mentioned, is for the purposes hereof styled "the actual offender," whether acting on behalf of himself or of another or others, and the actual offender, as well as the occupant, shall be personally liable to the penalties and punishments prescribed by the fifty-first and fifty-second sections of this Act, and at the prosecutor's option the actual offender may be prosecuted jointly with, or separately from the occupant, but both of them shall not be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor.

Secs. 95 and 96, cap. 181, R. S. O., amended.

Liquor kept for illicit sale may be confiscated.

9. When any inspector, policeman, constable or officer in making or attempting to make any search under or in pursuance of the authority conferred by sections ninety-five and ninety-six of the said Liquor License Act, or under the warrant mentioned in the last named section, finds in an unlicensed house or place, any spirituous or fermented liquor which in his or their opinion is unlawfully kept for sale or disposal contrary to this Act, he or they may forthwith seize and remove the same, and the vessels in which the same is kept, and upon the conviction of the occupant of such house or place, or of any other person, for keeping such spirituous or fermented liquor for sale in such house or place without license, the police magistrate or justices of the peace making any such conviction, may either in or by the said order of conviction, or by a separate or subsequent order, declare the said liquor and vessels to be forfeited to Her Majesty, and may order and direct that the said inspector, policeman, constable or officer shall destroy the same or any part thereof, and the inspector or other person as aforesaid shall thereupon forthwith destroy the same or part thereof as directed by such order.

10. If the person or persons charged with any or either of said offences, or any of them be not convicted, the said inspector or other person so seizing the said liquor as aforesaid, shall return the same to the place where such seizure was made; the inspector, or other person acting with him, or by or under his directions, shall be a public officer within the meaning of chapter seventy-three of the Revised Statutes for the purposes of this Act and the Liquor License Act.

If no conviction liquor shall be returned.

11. The sixth section of the fourteenth chapter of the Act passed in the forty-first year of Her Majesty's reign, intituled "An Act to amend the License Act, and for other purposes," is amended, by inserting the words "or the second part of The Canada Temperance Act, 1878," after the word "Ontario," in the third line thereof and after the word "Ontario," in the sixth line thereof; and the words "or under the second part of The Canada Temperance Act, 1878," after the word "Ontario," in the twelfth line of the said section; there shall be added to the said sixth section, at the end thereof, the following words: "whether the license fund is sufficient or otherwise."

Sec. 6 of cap. 14, 41 Vic., amended.

Applies existing law to Canada Temperance Act, 1878.

12. The eighth section of the said fourteenth chapter is amended, by inserting the words "or under the Canada Temperance Act, 1878, or The Temperance Act of 1864" after the word "Ontario," in the fourth line of the said section.

Sec. 8, cap. 14, 41 Vic., amended.

13. All of the provisions of sections one hundred and four, one hundred and five, one hundred and six, and one hundred and seven of the Revised Statutes of Ontario, chapter one hundred and eighty-one, shall be applicable to municipalities in which the second part of The Canada Temperance Act, 1878, is in force, and the said sections are hereby amended, by inserting the words "or the second part of The Canada Temperance Act, 1878," after the words "The Temperance Act of Ontario," wherever they appear in the said sections.

Municipalities under the Canada Temperance Act, 1878.

14. The council of any county, city, town, township, or village in which the second part of The Canada Temperance Act, 1878, is in force, may, from time to time, set apart any sum or sums of money for the purpose of paying any officer or officers, person or persons, for enforcing, or assisting to enforce The Canada Temperance Act, 1878, within their respective jurisdictions, and for the payment of any costs or expenses incurred in and about enforcing, or attempting to enforce the same; and such councils are hereby authorized and empowered to appoint one or more officers or persons to enforce, or assist in enforcing, the provisions of the said Act, and to pass by-laws for the government and control of such officers or persons, and defining their duties and mode, and amount of payment.

Municipal councils may aid in enforcing the Canada Temperance Act, 1878.

15. The following license duties for licenses issued under and in pursuance of sub-section four, of section ninety-nine, of The Canada Temperance Act, 1878, shall hereafter be payable: for each druggists or shop license in townships, thirty dollars; for each druggists or shop license in towns having a population of four thousand and under, thirty dollars; in towns having a population of from four thousand to six thousand, forty dollars; and in towns having a population of over

Duties payable for licenses issued under sec. 99, sub. sec. 4, C. T. A., 1878.

six thousand, fifty dollars; for each druggists or shop license in cities, fifty dollars; the population of towns and cities to be ascertained by reference to the general census or local municipal enumeration by assessors, whichever shall have been last taken.

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Application of  
license fund.

16. All sums received from duties on such druggists or shop licenses and for wholesale licenses, issued in municipalities in which The Canada Temperance Act, 1878, is in force shall form the license fund of the city, county or license district respectively in which the said The Canada Temperance Act, 1878, shall be in force, and shall be applied under regulations of the Lieutenant-Governor in Council, towards payment of the salary and expenses of the inspector, and for the expenses of the office of the board of commissioners and of officers, and otherwise in carrying the provisions of The Canada Temperance Act, 1878, into effect, and the residue (if any) on the thirtieth day of June in each year, and at such other times as may be prescribed by the regulations of the Lieutenant-Governor in Council shall be paid to the treasurer of the Province, to and for the use of the Province.

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Appeal allowed in certain cases.

17. An appeal to the court of appeal shall lie from any judgment or decision of any of the superior courts, or any judge thereof, upon any application to quash a conviction made under chapter one hundred and eight-one of the Revised Statutes of Ontario, or under this Act, or to discharge a prisoner who is held in custody under any such conviction, whether such conviction is quashed, or the prisoner discharged, or the application is refused; but no such appeal shall lie from the judgment or decree of a single judge, or from the judgment or decree of the court, if the court is unanimous, unless in either case the Attorney-General for Ontario shall certify that he is of opinion that the point in dispute is of sufficient importance to justify the case being appealed; upon such certificate being produced to the clerk of the court in which the judgment or decision proposed to be appealed from has been given, the said clerk shall certify, under the seal of the court the proceedings returned to or had before or in the said court, unto the court of appeal, and the said court shall thereupon hear and determine the said appeal, without any formal pleadings, and shall give such order for carrying into effect the judgment of the said court as the circumstances of the case may require. (*Vide R. S. O. cap. 70, sec. 9.*)

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Attorney-General's fiat.

Mileage to be paid inspector in certain cases.

18. Where the inspector is required in the case of an application for leave to transfer or remove a license to make an inspection, under sections twenty-eight and twenty-nine of this Act, and to travel, in order to make such inspection, a distance of more than three miles from his office or residence, the person making such application for a transfer or removal, shall pay to the inspector, in addition to all other fees, the sum of ten cents per mile, one way, for his travelling expenses, and the same shall be deposited by the inspector to the credit of the license fund; but the inspector may be allowed the same, or so much thereof as is necessary to pay the actual cost of his travelling expenses in order to make such inspection, upon his accounts being rendered and approved in the ordinary manner; this clause shall not apply to city license districts.

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19. Upon application to any board of license commissioners, before the first day of May in any year, by any one or more persons within any municipality within the jurisdiction of such board for a beer and wine license, the board may by resolution declare that any one or more of the tavern licenses which may be lawfully issued, and which are to be issued for the license year beginning on the first day of May of such year, not exceeding the number so applied for, may be beer and wine licenses, and the board may thereafter cause beer and wine licenses to be issued in any such municipality, not exceeding the number mentioned in their aforesaid resolution: Provided, nevertheless, that nothing in any such resolution contained, shall so limit the number of tavern or shop licenses, as to prohibit within any municipality the sale of spirituous liquors: And, provided, also, that nothing in such beer and wine license contained, or by reason of the granting thereof, shall authorize the holder thereof, his servants or agents, to sell, barter or otherwise dispose of any kind of intoxicating liquors other than those mentioned in the said beer and wine license.

Beer and wine licenses may be issued.

20. A beer and wine license shall be construed to mean a tavern-license for selling, bartering or trafficking, by retail, in lager beer, ale, beer, and porter and also in native wines, manufactured in Ontario, from grapes grown in Ontario, containing not more than per cent. of alcohol, in quantities of less than one quart, which may be drunk in the inn, ale or beer-house, or other house of public entertainment in which the same is sold.

Beer and native wines may be sold.

21. The holder of any such beer and wine license shall hold the same upon the terms and subject to all the conditions and penalties that apply to the holder of a tavern license; but, nevertheless, such holder of a beer and wine license shall not sell, barter or give, or keep in the house, or upon the premises for which such last mentioned license has been granted, any spirituous or intoxicating liquors other than those above authorized.

Holder of beer and wine license subject to conditions of tavern license.

22. If any holder of a beer and wine license, his servants or agents, shall sell or barter, or keep in the house, or upon the premises, for which a license has been granted, intoxicating liquors other than those mentioned in his license, or, shall knowingly sell, or barter, or keep in the house, or upon the premises for which a beer and wine license has been granted, native wine containing a greater quantity of alcohol than per cent. thereof, he shall be subject to the penalties provided by the fifty-first section of said Liquor License Act, as amended by this Act, and in addition thereto, upon a conviction for a second offence, the board of license commissioners may, by resolution, revoke and cancel his beer and wine license, and in the event of failure on their part so to do, application may be made by any resident of the municipality to the judge of the county court, upon affidavit and notice to the holder of the license, for an order to revoke and cancel said license; and if it appears to such judge that the holder of any such beer and wine license has been twice convicted of having sold intoxicating liquors other than those mentioned in the license, or of having kept the same upon or in the licensed premises, or of having sold

Holder of beer and wine license not to sell or keep spirits on premises licensed.

native wine containing a greater per centage of alcohol than per cent. thereof, as hereinbefore mentioned, or of having kept the same upon or in the licensed premises, then said judge shall make an order revoking and cancelling the said license, and it shall be revoked and cancelled from the date of such order. 5

Title of affidavits.

23. The affidavits on the application to the county judge referred to in the last preceding section may be intituled in the county court, and "In the matter of the beer and wine license of " and need not be otherwise intituled, and may 10 be sworn before any commissioner for taking affidavits.

24. This Act shall be read with and as part of the said Liquor License Act.

BILL.

An Act to give increased efficiency to the laws against the illicit sale of intoxicating liquors.

First Reading, 4th February, 1881.

Mr. HARDY.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to give increased efficiency to the laws against the illicit sale of intoxicating liquors.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Section twenty-eight of chapter one hundred and eighty-one of the Revised Statutes of Ontario, intituled "The Liquor License Act," is hereby amended by adding thereto the following as sub-section (2):

R. S. O., c. 181, s. 28, amended.

(2) Upon receipt by the inspector of an application for a transfer of a license, and pending the consideration and consent thereto by the board of commissioners as in the said section is mentioned, the inspector may within one month thereafter issue to the proposed transferee a written provisional consent in the form "Schedule M" to this Act annexed, under which such proposed transferee may exercise the rights granted by the license issued to the premises until the written consent of the board of commissioners may be obtained: Provided always that such written consent shall not operate or extend beyond one month from the time of the death of the original licensee or from the sale or transfer by the licensee or by operation of law; and provided further that such provisional consent shall not have any force or effect, unless the same be countersigned by one member of the board of license commissioners.

Provisional consent to a transfer of license.

2. Section thirty-one of the said Liquor License Act is amended as follows:—

Sec. 31, cap. 181, R. S. O. amended.

Sub-section four, of section thirty-one, of the Liquor License Act is repealed, and the following shall be sub-sections four, five and six of said section thirty-one:—

- (4) For each beer and wine license in cities ..... \$50 00
- "          "          "          towns. .... 40 00
- 30      "          "          "          other municipi-  
      palities..... 30 00
- (5) For each license (other than a beer and wine license),  
      for a vessel navigating any of the great lakes or  
      the rivers St. Lawrence or Ottawa ..... 100 00
- 35      For each beer and wine license for any such vessel.. 50 00
- For each license (other than a beer or wine license),  
      for a vessel navigating the inland waters of the  
      Province, other than as aforesaid ..... 60 00
- 40      For each beer and wine license for any such last-  
      mentioned vessel ..... 30 00
- (6) For every transfer or removal of a license under sections  
      twenty-eight and twenty-nine of this Act, five dollars,  
      and the mileage of the inspector, as provided by section  
      eighteen of this Act.

Fees for licenses.

- Sec. 34, cap. 181, R. S. O., amended. 3. Section thirty-four of the said *Liquor License Act* is amended by inserting after the word "licenses" in the second line the following: "and for transfers and removals thereof." 5
- Druggists. 42 Sec., cap. 181, R. S. O., amended. 4. Section *forty-two* of the said *Liquor License Act* is amended by striking out the words "twelve ounces," where they occur in the fifth and sixth lines thereof, and by substituting therefor the words "six ounces", ~~but~~ but this section shall not apply to "methylated alcohol," or oil of whiskey or other medicines for cattle and horses, and shall not come into force until the first of July next.  10
- Sec. 51, cap. 181, R. S. O., amended. 5. Section fifty-one of the said *Liquor License Act* is amended by striking out all the words thereof after the words "besides costs" in the eighth line thereof, and by substituting therefor the following: "and for the second offence on conviction thereof, such person shall forfeit and pay a penalty of not less than forty dollars, besides costs, and not more than sixty dollars, besides costs, and in default of payment thereof he shall be imprisoned in the county gaol of the county in which the offence was committed, for a period not exceeding two calendar months, and to be kept at hard labour, *in the discretion of the police magistrate or other convicting justice*; and for the third or subsequent offence, on conviction thereof, such person shall be imprisoned in such gaol for the period of three calendar months, to be kept at hard labour *in the discretion of the police magistrate or other convicting justice*, and in the event of the imprisonment of any person upon several warrants of commitment under different convictions in pursuance of this Act, whether issued in default of distress for a penalty or otherwise, the terms of imprisonment under such warrants shall be consecutive and not concurrent." 15 20 25 30
- Punishments provided for second and third offences. 6. Section fifty-three of the said *Liquor License Act* is amended by inserting the words "or without costs" after the word "complainant" in the eleventh line of said section. 30
- Sec. 53, cap. 181, R. S. O., amended. 7. Section seventy-seven of the said *Liquor License Act* is amended by striking out all the words after the word "offence" in the tenth line thereof, and inserting instead the following: "and no greater penalty or punishment is imposed than is authorized by this Act." 35
- Sec. 77, cap. 181, R. S. O., amended. 8. Section eighty-three of the said *Liquor License Act* is amended by adding thereto the following sub-section:— 40
- Sec. 83, cap. 181, R. S. O., amended. (2) The person actually selling, or otherwise contravening any of the provisions of this Act, as in this section mentioned, is for the purposes hereof styled "the actual offender," whether acting on behalf of himself or of another or others, and the actual offender, as well as the occupant, shall be personally liable to the penalties and punishments prescribed by the fifty-first and fifty-second sections of this Act, and at the prosecutor's option the actual offender may be prosecuted jointly with, or separately from the occupant, but both of them shall not be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor. 45 50
- Person selling as well as "occupant" to be liable. 9. When any inspector, policeman, constable or officer in making or attempting to make any search under or in pur- 50
- Secs. 95 and 96, cap. 181, R. S. O., amended.

suance of the authority conferred by sections ninety-five and ninety-six of the said Liquor License Act, or under the warrant mentioned in the last named section, finds in an unlicensed house or place, any spirituous or fermented liquor which in his opinion is unlawfully kept for sale or disposal contrary to *the said* Act, he may forthwith seize and remove the same, and the vessels in which the same is kept, and upon the conviction of the occupant of such house or place, or of any other person, for keeping spirituous or fermented liquor for sale in such house or place without license, the police magistrate or justices making such conviction, may in *and* by the said conviction, or by a separate or subsequent order, declare the said liquor and vessels *or any part thereof*, to be forfeited to Her Majesty, and may order and direct that the said inspector, policeman, constable or officer shall destroy the same or any part thereof, and the inspector or other person as aforesaid shall thereupon forthwith destroy the same or part thereof as directed by such *conviction or order*.

Liquor kept for illicit sale may be confiscated.

10. If the occupant or other person as aforesaid be not convicted of keeping the said liquor or any part thereof for sale as aforesaid, the said inspector or other person so seizing the said liquor as aforesaid, shall return the same to the place where such seizure was made; the inspector, or other person acting with him, or by or under his directions, and the policeman, constable or other officer acting under the said Liquor License Act or under this Act shall be a public officer within the meaning of chapter seventy-three of the Revised Statutes for the purposes of this Act and the Liquor License Act.

If no conviction liquor shall be returned.

11. The sixth section of the fourteenth chapter of the Act passed in the forty-first year of Her Majesty's reign, intituled "An Act to amend the License Act, and for other purposes," is amended, by inserting the words "or the second part of The Canada Temperance Act, 1878," after the word "Ontario," in the third line thereof and after the word "Ontario," in the sixth line thereof; and the words "or under the second part of The Canada Temperance Act, 1878," after the word "Ontario," in the twelfth line of the said section; there shall be added to the said sixth section, at the end thereof, the following words: "whether the license fund is sufficient or otherwise."

Sec. 6 of cap. 14, 41 Vic., amended.

Applies existing law to Canada Temperance Act, 1878.

12. The eighth section of the said fourteenth chapter is amended, by inserting the words "or under the Canada Temperance Act, 1878, or The Temperance Act of 1864" after the word "Ontario," in the fourth line of the said section.

Sec. 8, cap. 14, 41 Vic., amended.

13. All of the provisions of sections one hundred and four, one hundred and five, one hundred and six, and one hundred and seven of the Revised Statutes of Ontario, chapter one hundred and eighty-one, shall be applicable to municipalities in which the second part of The Canada Temperance Act, 1878, is in force, and the said sections are hereby amended, by inserting the words "or the second part of The Canada Temperance Act, 1878," after the words "The Temperance Act of Ontario," wherever they appear in the said sections.

Municipalities under the Canada Temperance Act, 1878.

14. The council of any county, city, town, township, or village in which the second part of The Canada Temperance

Municipal councils may aid in enforce-

ing the Canada Temperance Act, 1878. Act, 1878, is in force, may, from time to time, set apart any sum or sums of money for the purpose of paying any officer or officers, person or persons, for enforcing, or assisting to enforce The Canada Temperance Act, 1878, within their respective jurisdictions, and for the payment of any costs or expenses 5 incurred in and about enforcing, or attempting to enforce the same; and such councils are hereby authorized and empowered to appoint one or more officers or persons to enforce, or assist in enforcing, the provisions of the said Act, and to pass by-laws for the government and control of such officers or persons, and defining their duties and mode, and amount of pay- 10 ment.

Duties payable for licenses issued under sec. 99, sub. sec. 4, C. T. A., 1878. 15. The following license duties for licenses issued under and in pursuance of sub-section four, of section ninety-nine, of The Canada Temperance Act, 1878, shall hereafter be pay- 15 able: for each druggist's or shop license in townships, *fifteen* dollars; for each druggist's or shop license in towns *twenty* dollars; for each druggist's or shop license in cities, *thirty* dollars.

Application of license fund. 16. All sums received from duties on such druggists or shop 20 licenses and for wholesale licenses, issued in municipalities in which The Canada Temperance Act, 1878, is in force shall form the license fund of the city, county or license district respectively in which the said The Canada Temperance Act, 1878, shall be in force, and shall be applied under regulations of the 25 Lieutenant-Governor in Council, towards payment of the salary and expenses of the inspector, and for the expenses of the office of the board of commissioners and of officers, and otherwise in carrying the provisions of The Canada Temperance Act, 1878, into effect, and the residue (if any) on the thirtieth 30 day of June in each year, and at such other times as may be prescribed by the regulations of the Lieutenant-Governor in Council shall be paid to the treasurer of the Province, to and for the use of the Province.

Appeal allowed in certain cases. 17. An appeal to the court of appeal shall lie from any 35 judgment or decision of any of the superior courts, or any judge thereof, upon any application to quash a conviction made under chapter one hundred and eight-one of the Revised Statutes of Ontario, or under this Act, or to discharge a prisoner who is held in custody under any such conviction, whether 40 such conviction is quashed, or the prisoner discharged, or the application is refused; but no such appeal shall lie from the judgment or decree of a single judge, or from the judgment or decree of the court, if the court is unanimous, unless in either case the Attorney-General for Ontario shall certify that he is 45 of opinion that the point in dispute is of sufficient importance to justify the case being appealed; upon such certificate being produced to the clerk of the court in which the judgment or decision proposed to be appealed from has been given, the said clerk shall certify, under the seal of the court the proceedings 50 returned to or had before or in the said court, unto the court of appeal, and the said court shall thereupon hear and determine the said appeal, without any formal pleadings, and shall give such order for carrying into effect the judgment of the said court as the circumstances of the case may require. (*Vide* R. 55 S. O. cap. 70, sec. 9.)

Attorney-General's fiat.

18. Where the inspector is required in the case of an application for leave to transfer or remove a license to make an inspection, under sections twenty-eight and twenty-nine of this Act, and to travel, in order to make such inspection, a distance of more than three miles from his office or residence, the person making such application for a transfer or removal, shall pay to the inspector, in addition to all other fees, the sum of ten cents per mile, one way, for his travelling expenses, and the same shall be deposited by the inspector to the credit of the license fund; but the inspector may be allowed the same, or so much thereof as is necessary to pay the actual cost of his travelling expenses in order to make such inspection, upon his accounts being rendered and approved in the ordinary manner; this clause shall not apply to city license districts.

Mileage to be paid inspector in certain cases.

19. Upon application to any board of license commissioners, before the first day of May in any year, by any one or more persons within any municipality within the jurisdiction of such board for a beer and wine license, the board may by resolution declare that any one or more of the tavern licenses which may be lawfully issued, and which are to be issued for the license year beginning on the first day of May of such year, not exceeding the number so applied for, may be beer and wine licenses, and the board may thereafter cause beer and wine licenses to be issued in any such municipality, not exceeding the number mentioned in their aforesaid resolution: Provided, nevertheless, that nothing in any such resolution contained, shall so limit the number of tavern or shop licenses, as to prohibit within any municipality the sale of spirituous liquors: And, provided, also, that nothing in such beer and wine license contained, or by reason of the granting thereof, shall authorize the holder thereof, his servants or agents, to sell, barter or otherwise dispose of any kind of intoxicating liquors other than those mentioned in the said beer and wine license.

Beer and wine licenses may be issued.

20. A beer and wine license shall be construed to mean a tavern-license for selling, bartering or trafficking, by retail, in lager beer, ale, beer, and porter and also in native wines, manufactured in Ontario, from grapes grown in Ontario, containing not more than *fifteen* per cent. of alcohol, in quantities of less than one quart, which may be drunk in the inn, ale or beer-house, or other house of public entertainment in which the same is sold.

Beer and native wines may be sold.

21. The holder of any such beer and wine license shall hold the same upon the terms and subject to all the conditions and penalties that apply to the holder of a tavern license; but, nevertheless, such holder of a beer and wine license shall not sell, barter or give, or keep in the house, or upon the premises for which such last mentioned license has been granted, any spirituous or intoxicating liquors *for sale* other than those thereby authorized; and as to such other liquors, the holder of such beer and wine license shall be deemed to be unlicensed, and section nine of this Act shall apply.

Holder of beer and wine license subject to conditions of tavern license.

22. If any holder of a beer and wine license, his servants or agents, shall sell or barter, *give* or keep in the house, or upon the premises, for which a license has been granted, intoxicating liquors other than those mentioned in his license, *for sale*, or, shall

Holder of beer and wine license not to sell or keep spirits on premises licensed.

knowingly sell, or barter, *give* or keep in the house, or upon the premises for which a beer and wine license has been granted, native wine containing a greater quantity of alcohol than *fifteen* per cent. thereof, he shall be subject to the penalties provided by the fifty-first section of said Liquor License Act, as amended by this Act, and in addition thereto, upon a conviction for a second offence, the board of license commissioners may, by resolution, revoke and cancel his beer and wine license, and in the event of failure on their part so to do, application may be made by any resident of the municipality to the judge of the county court, ~~in~~ in the manner prescribed in the sixty-fourth section of the Liquor License Act which shall apply to such application ~~for~~ for an order to revoke and cancel said license; and if it appears to such judge that the holder of any such beer and wine license has been twice convicted of having sold or *given* intoxicating liquors other than those mentioned in the license, or of having kept the same upon or in the licensed premises, *for sale*, or of having *knowingly* sold or *given* native wine containing a greater percentage of alcohol than *fifteen* per cent. thereof, as hereinbefore mentioned, or of having *knowingly* kept the same upon or in the licensed premises, then said judge shall make an order revoking and cancelling the said license, and it shall be revoked and cancelled from the date of such order, *or from the passing of the aforesaid resolution by the commissioners.*

“Three half pints,” equivalent to five quarter pints imperial measure.

**23.** Wherever the words “three half pints” are mentioned or referred to in the said Liquor License Act, they shall, for the purposes of that Act, where bottled liquor is sold, be held to be equivalent to five quarter pints Imperial measure.

Inspector may test liquors kept by license

**24.** The inspector may from time to time take from the liquors kept by a person holding a beer and wine license upon the premises sufficient thereof to determine whether they are of a different kind from those mentioned in the license, or contain more alcohol than is by law allowed.

Commissioners of police and chief of police to enforce provisions of R.S.O. c. 181, s. 97.

**25.** It shall be the duty of the board of commissioners of police, and of the chief of police, to enforce the provisions of section ninety-seven of the Liquor License Act, and any officer or policeman convicted of violating the provisions of said section may be summarily dismissed.

**26.** Wherever in the said Liquor License Act the words “at hard labour” or “with hard labour” occur, the following words are substituted therefor, namely, “without hard labour or with hard labour, at the discretion of the convicting justices or police magistrate,” and the forms G, H, I and J, shall be varied to accord with the sentence imposed by the said magistrate or justices.

Repeal of by-laws passed under s. 32.

**27.** Any by-law heretofore passed under the provisions of section thirty-two of the said Liquor License Act may, in the year one thousand eight hundred and eighty-one, be varied, amended or repealed, or a new by-law may be passed under the provisions of the said section on or before the fifteenth day of May in the said year.

28. The seventy-fifth section of the said Liquor License Act shall be held to be applicable to the forms appended to this Act. 

R. S. O., c. 181, s. 75, to apply to forms under this Act.

29. This Act shall be read with and as part of the said 5 Liquor License Act.

This Act to be read with R. S. O., c. 181.

BILL.

An Act to give increased efficiency to the laws against the illicit sale of intoxicating liquors.

*(Reprinted as amended.)*

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First Reading, 4th February, 1881.

Second " 15th February, 1881.

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Mr. HARDY.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act respecting Snow Fences.

**W**HEREAS serious obstruction to winter travel on many of the highways in the Province is caused by the accumulation of snow-drifts and it is desirable to encourage the construction along the lines of highway of fences designed to obviate such obstructions ;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. The council of every township, city, town or incorporated village shall have power to require any owners or occupiers of lands bordering upon any public highway, to take down, alter, or remove any fence or fences found to cause an accumulation of snow or drift so as to impede or obstruct the travel on such public highway, or any part thereof and to make such compensation to such owners or occupants for the taking down, alteration or removal of such fence or fences and for the construction of some other description of fence approved of by the council in lieu of the one so required to be taken down, altered, or removed as may be mutually agreed upon. And if the council and the owners or occupants cannot agree, then the compensation to be paid by the council shall be settled by arbitration in the manner provided by the Municipal Act, and the award so made shall be binding upon all parties.

2. In case any such owner or occupant shall refuse or neglect to take down, alter, or remove such fence or fences and to construct such other fence or fences as required by the council, the council may, after the expiration of two months from the time the compensation to be paid by the council has been agreed upon or settled by arbitration, proceed to take down, alter, or remove the old fence and construct the other description of fence which has been approved of by the council, and all costs and charges thereby incurred by the council over and above the amount of compensation agreed upon or settled by arbitration, may immediately be recovered by action in any division court having jurisdiction in the locality, and the judgment obtained in such court shall, when it is registered in the registry office of the county, or other registration division in which the land lies, constitute a first lien and charge upon the lands in respect of which it was made.

Preamble.

Councils may require owners or occupants of land to remove fences;

Making compensation therefor.

Power in case of neglect or refusal by owner or occupant to construct fence as directed.

BILL.

An Act respecting Snow Fences.

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First Reading, 4th February, 1881.

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Mr. Ross.

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TORONTO:

PRINTED BY C. BLACKNETT HOBBS.

## Act to amend the Assessment Act.

HER MAJESTY by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Sub-sections sixteen, seventeen, and eighteen, of section R.S.O. c. 180,  
 5 six, of chapter one hundred and eighty, of the Revised Statutes s. 6, sub-ss.  
 of Ontario, entitled, "An Act respecting the Assessment of 16-18, re-  
 Property," are hereby repealed. pealed.
2. Sub-section twenty, of said section six, is hereby Sec. 6, sub-s.  
 amended, by striking out all the words of said sub-section, after 20, amended.  
 10 the word "property," in the third line.
3. Sub-section twenty-four, of said section six, is hereby Sec. 6, sub-s.  
 amended, by striking out the word "except," and adding the 24, amended.  
 following words after the word "mortgages," "interest, divi-  
 15 the capital stock of any incorporated bank doing business in this  
 Province, and from stock held by any person in any railroad  
 company, and from shares in building societies, and from  
 personal property invested in any company incorporated for  
 the purpose of lending money on the security of real estate."

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2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to amend the Assessment Act.

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First Reading, 7th February, 1881.

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Mr. CALVIN.

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TORONTO:  
PRINTED BY C. BLACKETT ROBINSON.

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No. 97.]

**BILL.**

[1881.

An Act to amend the Municipal Act.

**H**ER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows:—

1. Section four hundred and ninety-two, of the Municipal R.S.O. c. 174,  
5 Act, is hereby amended, by adding after the word "county," in <sup>s. 492,</sup> amended.  
the ninth line of the said section, the following words: "or  
any incorporated town in the said county, which has not been  
separated for municipal purposes from such county."

No. 97.

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2nd Session, 4th Legislature, 44 Vic., 1881.

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**BILL.**

An Act to amend the Municipal Act.

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First Reading, 7th February, 1881.

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**MR. MURRAY.**

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

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No. 98.]

**BILL.**

[1881.

An Act to amend the Act respecting Municipal Assessments and Exemptions.

**H**ER MAJESTY, by and with the advice of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Nothing contained in the Act respecting Municipal Assessments and Exemptions, passed in the forty-third year of Her Majesty's reign, and chaptered twenty-seven, shall be construed as exempting the shareholders of an incorporated company of any kind from being assessed in respect of dividends, or income by them derived from their stock or shares, whether such company does or does not belong to any of the classes of cases mentioned in sub-section two, of section one, of the said Act.

Assessment of dividends derived from incorporated companies.

2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to amend the Act respecting Municipal Assessments and Exemptions.

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First Reading, 7th February, 1881.

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Mr. McLAUGHLIN.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Municipal Law.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as “The Municipal Amendment Act of 1881.” Mode of citation.

2. Section five hundred and forty-four, of the Municipal Act, is hereby repealed, and the following substituted therefor; R. S. O., c. 174, s. 544, repealed and new section submitted.

If a drain already constructed, or hereafter constructed by a municipality, is used as an outlet by another municipality, company, or individual, or if any municipality, company, or individual, by any means cause waters to flow upon and injure the lands of another municipality, company, or individual, the municipality, company, or individual using such drain as an outlet, or otherwise, or causing waters to flow upon and injure such lands, may be assessed in such proportion and amount as may be ascertained by the engineer, surveyor, or arbitrators, under the formalities provided in the foregoing sections, for the construction and maintenance of such drain so used as an outlet, as aforesaid; or for the construction and maintenance of such drain or drains as may be necessary for conveying from such lands the waters so caused to flow upon and injure the same.

3. Section thirty-three, of “The Municipal Amendment Act of 1879,” is hereby amended, by striking out all the words after “year,” in the sixth line, and substituting the following therefor: “and from time to time thereafter, if such office should from any cause be vacant; but the council shall not appoint to such office a member or an officer of the county council, or of any other municipal council interested in any appeal coming before such court.” 42 Vic. c. 31, s. 33 amended.

No. 99.

2nd Session, 4th Legislature, 44 Vic., 1881.

BILL.

An Act to amend the Municipal Law.

First Reading, 7th February, 1881.

Mr. ROBINSON, (*Kent*).

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to make provision for the Administration of  
Justice in the County of Dufferin.

**W**HEREAS by the Act passed in the thirty-eighth year of Her Majesty's reign, chapter thirty-one, and the Act passed in the forty-third year of Her Majesty's reign, chapter thirty-seven, provision was made for the formation of certain territory within the limits of the counties of Wellington, Grey and Simcoe into a new county by the name of the county of Dufferin; and whereas a proclamation was duly issued by the Lieutenant-Governor in Council declaring the said territory to be formed into a new county upon and from the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and eighty-one, as authorized by the said Acts; and whereas it is expedient to make further provision for the administration of justice in the said county;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The following shall form and constitute the number and limits of the different division courts of the said county of Dufferin, until such division courts or the limits thereof shall be altered under the provisions of "The Division Courts Act."

Number and  
limits of Divi  
sion Courts.

*First Division Court:* The town of Orangeville, the township of East Garafraxa, and all that portion of the township of Amaranth lying south of the southerly boundary of lot number twenty-six in each concession of the township of Amaranth.

*Second Division Court:* The village of Shelburne, the township of Melancthon, and all that portion of the township of Amaranth lying north of the southerly boundary of lot number twenty-six in each concession of the said township of Amaranth.

*Third Division Court:* The township of Mulmur.

*Fourth Division Court:* The township of Mono.

2. The sittings of the Ninth Division Court of the county of Wellington, and the office of the Clerk thereof, shall be continued in the town of Orangeville until the judge of the said county shall make an order for the holding thereof in some other place.

Ninth Divi-  
sion Court of  
Wellington  
continued.

3. All suits and proceedings at the time of the coming in force of the said proclamation pending or being in the Seventh Division Court of the county of Simcoe shall become suits and proceedings of the said Third Division Court of the county of Dufferin, and shall be continued in such Court as if they had been commenced therein.

Provision as to  
suits pending  
in Seventh  
Division Court  
of Simcoe.

Provision as to suits pending in Eighth Division Court of Simcoe.

4. All suits and proceedings at the time of the coming in force of the said proclamation pending or being in the then Eighth Division Court of the county of Simcoe shall become suits and proceedings of the said Fourth Division Court of the county of Dufferin, and shall be continued in such Court as if they had been commenced therein. 5

Services of process in pending suits.

5. Any writ, process or proceeding in any such suit or proceeding may be served, executed and enforced by the bailiff of the court in which the suit is, and may be so served, executed and enforced in any of the Counties of Simcoe, Wellington and Dufferin; and any writ, process or proceeding in any suit at the time of the passing of this Act, pending or being in the Ninth Division Court of the County of Wellington, or the Fifth Division Court of the County of Grey, may be served, executed and enforced by the bailiff of such court within his county, or within the said County of Dufferin. 10 15

Hearing of suits in Seventh and Eighth Division Courts of Simcoe.

6. Any suit or other proceeding which might, and would in due course, have been tried or heard at the sittings of the said Seventh Division Court of the county of Simcoe, which, before the issue of the said proclamation, had been appointed for the sixth day of February, one thousand eight hundred and eighty-one, shall, without further notice to the parties, be tried or heard at the first sittings of the said Third Division Court of the county of Dufferin, and every suit or proceeding which might, and would in due course, have been tried or heard at the sittings of the said Eighth Division Court of the county of Simcoe, appointed for the fifth day of February aforesaid, shall, without further notice to the parties, be tried or heard at the first sittings of the said Fourth Division Court of the county of Dufferin: Provided always that in any case the judge may, where he considers the interests of justice require, adjourn the trial or hearing, or grant a new trial, in the same manner as he could do if such suit or proceeding had been originally commenced in the Court to which it is transferred under this Act. 20 25 30

Delivery of papers by clerks and bailiffs.

7. Any person who at the said time held the office of clerk or bailiff of either of the said Seventh and Eighth Division Courts of the county of Simcoe in possession of any books, papers, writs or documents appertaining to either of such courts or the business thereof, shall deliver the same to the clerk of the division court of the county of Dufferin to which the suits and proceedings belong under the provisions of this Act. 35 40

Clerk of the peace to consolidate jurors' book, &c.

8. The clerk of the peace for the said county of Dufferin upon receiving from the clerks of the peace of the said counties of Wellington, Grey and Simcoe, the jurors' books, jurors' rolls and jurors' lists, as provided by the sixtieth section of the Jurors' Act, shall consolidate the same respectively, and form therewith one jurors' book, jurors' roll, and jurors' list respectively, and the same, when so consolidated, shall form the jurors' book, jurors' roll and jurors' list respectively, for the said county of Dufferin, for the year one thousand eight hundred and eighty-one, subject to the increase of the same, in the manner provided by the fifty-ninth section of the said Jurors' Act. 45 50

9. No unsatisfied writ against lands or goods in the hands of the sheriff of any of the said counties of Wellington, Grey, or Simcoe on the day the said proclamation came into force, or at the time of the passing of this Act, shall bind lands or goods situate within the limits of the said County of Dufferin, or have any effect upon such lands or goods after one year from the said day, unless the person entitled to the benefit of such unsatisfied writ, before the expiration of the said year, shall have placed a writ against lands or goods (as the case may require), in the hands of the sheriff of the County of Dufferin, indorsed with a notice that priority is claimed by virtue of this Act, in which case his writ, in the hands of such first mentioned sheriff, if it at the said time did bind lands or goods within the county of Dufferin, shall continue to bind such lands or goods, and shall retain its priority so long as such indorsed writ remains in force: Provided that such person shall not in the meantime have permitted his writ in the hands of the said sheriff of Wellington, Grey or Simcoe to expire, or shall not have otherwise lost his priority.
10. **10.** The thirteenth section of the said Act passed in the forty-third year of Her Majesty's reign shall not be held to authorize the sheriff of any of the said counties of Wellington, Grey or Simcoe to execute within the county of Dufferin any writ which does not depend for its priority upon a former writ executed by him, and which was not in his hands at the time of the passing of this Act.
11. The treasurer of each of the said counties of Wellington, Grey and Simcoe shall, upon being requested so to do, deliver to the treasurer of the said county of Dufferin the books relating to the townships and villages within the said county of Dufferin, required to be kept by such treasurers, under the provisions of section one hundred and twenty of the Assessment Act.
12. The head and members of the provisional council, and the officers, by-laws, contracts, property, assets and liabilities of the provisional corporation shall be held to have become from the day named in the proclamation for the said provisional county becoming a county, the head and members of the council, and the officers, by-laws, contracts, property, assets and liabilities of the new corporation, and the provisions of any law in force in this province, in any wise affecting or relating to the proceedings consequent upon the dissolution of union of counties, shall be held to apply, so far as applicable, to the separation of the town and townships aforesaid from the respective counties of which they theretofore formed part, and the erection thereof into a new county, unless when different provision is made by the said recited Acts or this Act.
13. In order to apply such provisions, the portions of territory detached from each of the counties of Wellington, Grey and Simcoe, wherever this is necessary to give any such provisions proper effect, shall, as respects the county from which such portion was detached, be regarded as a junior county; and each of the said counties, as to the portion of territory detached from it, shall be regarded as a senior county; but in other cases, the provisions of law respecting junior counties, and the proceed-
- How writs against lands and goods in the county of Dufferin may be continued in force.
- What writs may be executed in Dufferin by sheriffs of Simcoe, Grey and Wellington.
- Delivery of books to treasurer of Dufferin.
- Council, officers and property of provisional corporation to be those of new corporation.
- Portion of counties detached to be regarded as junior counties so far as required to give effect to provisions for dissolution of counties.

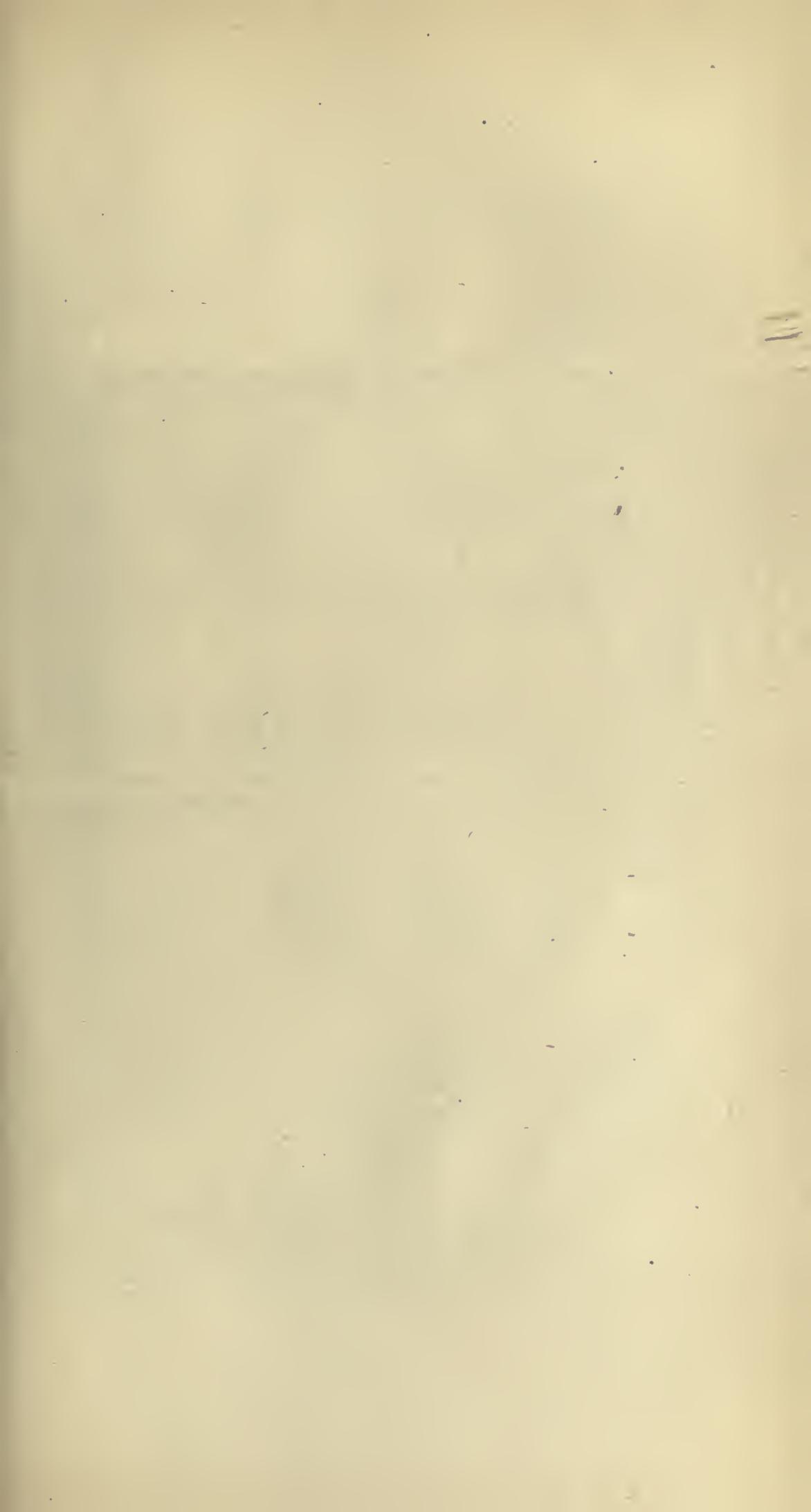
ings to be taken in any such county upon its separation from a senior county, and the powers and duties of the courts, justices, officers and council thereof, shall be held to apply to the whole of the said county of Dufferin, and to the courts, justices, officers and council thereof, unless where different provision is made as aforesaid. (Vide R. S. O. cap. 47, secs. 13-17, cap. 18, secs. 58-61, cap. 174, secs. 35-49, 43 Vic. cap. 37. 5

Provisions as to registration of chattel mortgages.

14. No chattel mortgage which, (or a copy of which,) had before the said proclamation came into force, been duly registered in the office of the clerk of the county court of either of the counties of Wellington, Grey or Simcoe, shall require to be, or be held to have required to have been, again registered in the office of the clerk of the county court of the county of Dufferin, by reason of the separation of any part of the territory forming such new county from the county to which it formerly belonged, or of the formation of such new county; but in the event of the permanent removal of goods and chattels mortgaged out of the former limits of the county in which the mortgage is registered into another portion of the county of Dufferin, before the payment and discharge of the mortgage, a certified copy of such mortgage, under the hand of the clerk of the county court in whose office it was first registered, and under the seal of the said court, and of the affidavits and documents and instruments relating thereto filed in such office, shall be filed with the clerk of the county court of the county of Dufferin within two months from such removal, or within two months after the passing of this Act, otherwise the said goods and chattels shall be liable to seizure and sale under execution, and in such case the mortgage shall be null and void as against subsequent purchasers and mortgagees in good faith for valuable consideration, as if never executed. (Vide R. S. O. c. 119, s. 9.) 10 15 20 25 30

Statement for purpose of renewal of mortgage to be filed with clerk of county court of Dufferin.

15. Where any goods and chattels subject to a chattel mortgage which (or a copy of which,) has been duly registered in the office of the clerk of the county court of either of the counties of Wellington, Grey or Simcoe are, at the time that such mortgage requires renewal in the manner provided by the second section of the Act passed in the forty-third year of Her Majesty's reign, intituled "An Act to amend the Revised Statute respecting mortgages and sales of personal property," in order to keep the same in force against the creditors of the persons making the same, the statement, affidavit and other documents required by the said second section, and also a certified copy of such mortgage, under the hand of the clerk of the county court in whose office it was first registered, shall be filed with the clerk of the county court of the county of Dufferin; and in case the same are not so filed with such clerk within thirty days next preceding the expiration of the term of one year from the filing thereof, or the filing of the last statement and affidavit under the said section, such mortgage shall cease to be valid as against the creditors of the persons making the same, and against subsequent purchasers and mortgagees in good faith for valuable consideration; and it shall not be necessary, in order to keep such chattel mortgage in force as aforesaid, in respect of any goods or chattels in the said county of Dufferin, that any statement, affidavit or document should be filed in the office of the clerk of the peace of any other county. 35 40 45 50 55



No. 100.

2nd Session, 4th Legislature, 44 Vic. 1881.

BILL.

An Act to make provision for the Administration of Justice in the County of Dufferin.

First Reading, 7th February, 1881.

Mr. HARDY.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to make provision for the safety of Railway  
Employees and the Public.

**W**HEREAS frequent accidents to railway servants and Preamble.  
others are occasioned by the neglect of railway companies  
to provide a fair and reasonable measure of protection against  
their occurrence ; and whereas a proper construction of railway  
5 bridges and certain precautions in the construction and main-  
tenance of railway frogs, wing-rails, guard-rails, and freight  
cars would greatly lessen, if not entirely prevent, the happen-  
ing of such accidents ;

Therefore Her Majesty, by and with the advice and consent  
10 of the Legislative Assembly of the Province of Ontario, enacts  
as follows :—

1. This Act may be cited [as “ The Railway Accidents’ Act, Short title.  
1881.”

2. This Act and the respective provisions thereof apply to Application of  
15 every railway and railway company in respect of which the Act.  
Legislature of Ontario has authority to enact such provisions  
respectively ; and, in this Act, the expression “ Railway Com-  
pany ” includes the owner or lessee of any such railway, and  
the contractor working or operating the same.

20 **3.** In this Act the word “ packing ” shall mean a packing of “ Packing,”  
wood or metal, or some other equally substantial and solid mater- meaning of.  
ial, of not less than two inches in thickness, and which, where by  
this Act required to be filled in, shall extend to within one and  
a-half inches of the crown of the rails in use on any such rail-  
25 way, shall be neatly fitted so as to come against the web of such  
rails, and shall be well and solidly fastened to the ties on which  
such rails are laid.

4. Every highway or other overhead bridge, or other Existing  
erection or structure over any railway, existing at the time of bridges to be  
30 the passing of this Act, of which the lower beams or mem- altered so as to  
bers of the superstructure are not of a sufficient height from leave a space  
the surface of the rails to admit of an open and clear head- of 7 feet be-  
way of at least seven feet between the top of the highest tween such  
freight cars then running on such railway and the bottom of bridges and  
35 such lower beams or members, shall, within twelve months the tops of  
from that date, be re-constructed to that effect, with suitable freight cars.  
approaches thereto, if a bridge, by and at the cost of the  
railway company, municipality or other owner thereof, and  
shall, at all times thereafter be maintained at such height ;  
40 and every such railway company before using higher freight  
cars than those running on their railway at the time of the  
passing of this Act, or of the re-construction as aforesaid of

any such bridge or other erection or structure, as the case may be, shall, after having first obtained the consent of the municipality, or of the owners of such bridge or other erection or structure, raise every such bridge or other erection or structure over their railway and the approaches thereto, if necessary, 5 at the cost and charges of the railway company, so as to admit as aforesaid an open and clear headway of not less than seven feet over the top of the highest freight car then about to be used on the railway.

Where new bridges are built or old ones re-built, space of 7 feet to be left between such bridges and the tops of freight cars.

5. Whenever a highway bridge or any other erection 10 or structure shall hereafter be constructed over a railway, or whenever it shall become necessary to re-construct any highway bridge, or other erection or structure already built over a railway, or to make large repairs to the same, the lower beams or members of the superstructure of any such highway or over- 15 head bridge, or of any other erection or structure over any railway, and the approaches thereto, shall be constructed or re-constructed by and at the cost of the railway company or of the municipality or other owner of the bridge, erection or structure, as the case may be, and shall at all times be main- 20 tained at a sufficient height from the surface of the rails of the railway to admit of an open and clear headway of not less than seven feet between the top of the highest freight cars then running on the railway and the lower beams or members of such bridge or other erection; and thereafter, any railway 25 company, before using higher freight cars than those running on their railway at the time of the construction or re-construction of, or large repair to, such bridge or other erection or structure, shall, after having first obtained the consent of the municipality, or of the owners of such highway bridge, 30 or other erection or structure, raise the said bridge or other erection or structure, and the approaches thereto, if necessary, at the cost and charges of the railway company, so as to admit, as aforesaid, an open and clear headway of not less than seven feet over the top of the highest freight car then 35 about to be used on the railway.

Special provisions against accident.

6. To make further provision against accidents, it is hereby further enacted that

- (1) On every railway aforesaid, and at all times after the lapse of three months from the passing of this 40 Act, the space between the rails in each railway frog extending from the point thereof backward to where the heads of such rails are not less than five inches apart, shall be filled in with packing; and the space not so filled in between the heads of wing-rails and every 45 such frog, and between the head of any guard-rail and that of any other rail fixed and used alongside thereof on any such railway, shall not be more than one and one-half of an inch in width;
- (2) On every such railway, and at all times during every month 50 of April, May, June, July, August, September and October after the passing of this Act, (but not including the months of April and May next after the passing hereof), the space between any such wing-rail and railway frog, and between any such guard-rail and any other rail fixed 55 and used alongside thereof as aforesaid, and between all

wing-rails where no other rail intervenes, shall, save only where such space between the heads of any such wing-rail and railway frog as aforesaid, or between any such guard-rail and other rail fixed and used alongside thereof as aforesaid, or between any such wing-rails where no other rail intervenes as aforesaid, is not more than one and one-half of an inch in width, be filled in with packing ;

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(3) The running-board on the roof of each box car used for freighting purposes on any such railway, shall at all times after the lapse of twelve months from the passing of this Act, be of a sufficient thickness and strength, and not less than thirty inches in width, and shall, with proper and safe supports, extend the whole length of such car, and beyond each end thereof to a point not more than two inches less than that to which the dead-wood or bumpers at each end of such car likewise extend ;

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And every railway company owning, working or operating said railway so make, arrange and construct and re-arrange, reconstruct and maintain all railway frogs, wing-rails, guard-rails and other rails forming part of such railway or used therewith, and every such space as aforesaid, and the filling in thereof with packing as aforesaid, and the running-board on every such box car as aforesaid in such manner and at such time that the same shall respectively conform to and comply with the requirements in that behalf of this section.

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7. Where within this Province personal injury is caused to a railway servant, whilst in the employment or service of a railway company, on any railway owned, worked or operated by said railway company, or to any other person lawfully in, upon or about said railway, or any train or car thereon, and such personal injury has been occasioned or arose either wholly or partly

Railway company neglecting provisions of the preceding sections to be liable for injury occasioned by such neglect.

35

(1) By reason of the lower beams or members of the superstructure of any highway, or other overhead bridge, or any other erection or structure over said railway, not being at all times after the lapse of twelve months from the passing of this Act, of a sufficient height from the surface of the rails to admit of an open and clear headway of at least seven feet between the top of the highest freight cars then running on such railway, and the bottom of such lower beams or members ; or,

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(2) By reason of the space between the rails in any railway frog, extending from the point of such frog backward to where the heads of such rails are not less than five inches apart, not being at all times after the lapse of three months from the passing of this Act filled in with packing ; or,

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(3) By reason of the space between any wing-rail and any such railway frog, and between any such guard-rail and any other rail fixed and used alongside thereof as aforesaid, and between all wing-rails where no other rail intervenes, save only where such space between the heads of any such wing-rail and railway-frog as aforesaid, or between any such guard-rail and other rail fixed and used alongside thereof as aforesaid, or between any such wing-rails where no other rail intervenes as

aforesaid, is not more than one and one-half of an inch in width, not being at all times during every month of April, May, June, July, August, September and October, excepting the months of April and May next after the passing hereof, filled in with packing; or 5

- (4) By reason of the running-board on the roof of any box car used for freighting purposes on any such railway, after the lapse of twelve months from the passing of this Act, not being of a sufficient thickness and strength, and at least thirty inches in width, and with proper and safe supports, extending the whole length of such car and beyond each end thereof to a point not more than two inches less than that to which the dead-wood or bumpers at each end of such car shall then be likewise extending, 15

such railway servant or other person, or in case the injury results in death, the legal personal representatives of such servant or other person, and any persons entitled in case of death, shall be entitled to recover from such railway company compensation for all damages and loss sustained from or by reason of such injury; and where any such injury has been so caused to or suffered by any such railway servant, the right of compensation and the remedies against the railway company shall be the same as if such railway servant had not been a servant of, nor in the employment of the railway company, nor engaged 25 in its work. 25

When railway not liable for default.

8. A railway servant shall not be entitled, under this Act, to any right of compensation or remedy against the railway company of which he is such servant in any of the following cases, that is to say; 30

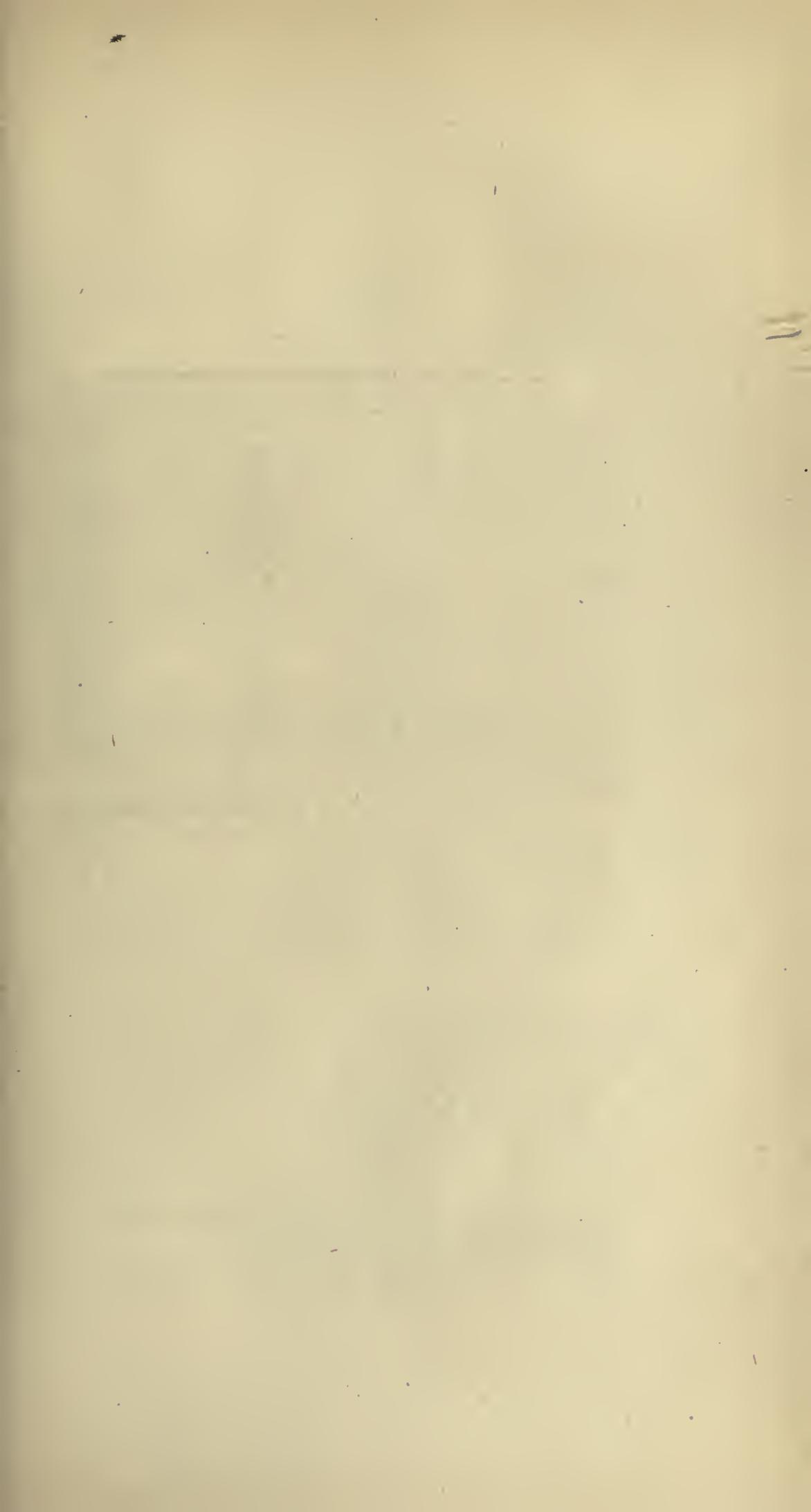
- (1) Unless the default, matter, or thing occasioning either wholly or partly the personal injury referred to in section seven of this Act, arose from or had not been discovered or remedied, owing to the negligence of such railway company, or of some person in the service of and entrusted by the railway company with the duty of seeing that such default, matter or thing did not happen, occur or exist; 35
- (2) In any case where the railway servant knew of the matter, default or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the railway company or some person superior to himself in the service of the railway company, unless he was aware that the railway company or such superior already knew of the said matter, default or negligence; 40
- (3) In any case where such matter, default or negligence was occasioned by his own act, omission or negligence. 45

Limit of compensation for injury.

9. The amount of compensation recoverable under this Act, in the case of injury to any railway servant as aforesaid, shall not exceed such sum as may be found equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade, employed during those years in the like employment, and within this Province. 50

Limitation of actions.

10. An action for the recovery, under this Act, of compensation for an injury, shall not be maintainable unless the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death. 55



No. 101.

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2nd Session, 4th Legislature, 44. Vic, 1881.

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**BILL.**

An Act to make provision for the safety of  
Railway Employe'es and the Public.

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First Reading, 7th February, 1881.

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Mr. FRASER

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to make provision for the safety of Railway  
Employees and the Public.

**W**HEREAS frequent accidents to railway servants and others are occasioned by the neglect of railway companies to provide a fair and reasonable measure of protection against their occurrence ; and whereas a proper construction of railway bridges and certain precautions in the construction and maintenance of railway frogs, wing-rails, guard-rails, and freight cars would greatly lessen, if not entirely prevent, the happening of such accidents ;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as “ The Railway Accidents’ Act, 1881.” Short title.

2. This Act and the respective provisions thereof apply to every railway and railway company in respect of which the Legislature of Ontario has authority to enact such provisions respectively ; and, in this Act, the expression “ Railway Company ” includes the owner or lessee of any such railway, and the contractor working or operating the same. Application of Act.

3. In this Act the word “ packing ” shall mean a packing of wood or metal, or some other equally substantial and solid material, of not less than two inches in thickness, and which, where by this Act required to be filled in, shall extend to within one and a-half inches of the crown of the rails in use on any such railway, shall be neatly fitted so as to come against the web of such rails, and shall be well and solidly fastened to the ties on which such rails are laid. “ Packing,” meaning of.

4. Every highway or other overhead bridge, or other erection or structure over any railway, existing at the time of the passing of this Act, of which the lower beams or members of the superstructure are not of a sufficient height from the surface of the rails to admit of an open and clear headway of at least seven feet between the top of the highest freight cars then running on such railway and the bottom of such lower beams or members, shall, within twelve months from that date, be re-constructed to that effect, with suitable approaches thereto, if a bridge, by and at the cost of the railway company, municipality or other owner thereof, and shall, at all times thereafter be maintained at such height ; and every such railway company before using higher freight cars than those running on their railway at the time of the passing of this Act, or of the re-construction as aforesaid of

Existing bridges to be altered so as to leave a space of 7 feet between such bridges and the tops of freight cars.

any such bridge or other erection or structure, as the case may be, shall, after having first obtained the consent of the municipality, or of the owners of such bridge or other erection or structure, raise every such bridge or other erection or structure over their railway and the approaches thereto, if necessary, at the cost and charges of the railway company, so as to admit as aforesaid an open and clear headway of not less than seven feet over the top of the highest freight car then about to be used on the railway. 5

Where new bridges are built or old ones re-built, space of 7 feet to be left between such bridges and the tops of freight cars.

5. Whenever a highway bridge or any other erection or structure shall hereafter be constructed over a railway, or whenever it shall become necessary to re-construct any highway bridge, or other erection or structure already built over a railway, or to make large repairs to the same, the lower beams or members of the superstructure of any such highway or overhead bridge, or of any other erection or structure over any railway, and the approaches thereto, shall be constructed or re-constructed by and at the cost of the railway company or of the municipality or other owner of the bridge, erection or structure, as the case may be, and shall at all times be maintained at a sufficient height from the surface of the rails of the railway to admit of an open and clear headway of not less than seven feet between the top of the highest freight cars then running on the railway and the lower beams or members of such bridge or other erection; and thereafter, any railway company, before using higher freight cars than those running on their railway at the time of the construction or reconstruction of, or large repair to, such bridge or other erection or structure, shall, after having first obtained the consent of the municipality, or of the owners of such highway bridge, or other erection or structure, raise the said bridge or other erection or structure, and the approaches thereto, if necessary, at the cost and charges of the railway company, so as to admit, as aforesaid, an open and clear headway of not less than seven feet over the top of the highest freight car then about to be used on the railway. 10 15 20 25 30 35

Special provisions against accident.

6. To make further provision against accidents, it is hereby further enacted that

- (1) On every railway aforesaid, and at all times after the lapse of three months from the passing of this Act, the space between the rails in each railway frog extending from the point thereof backward to where the heads of such rails are not less than five inches apart, shall be filled in with packing; 40
- (2) On every such railway, and at all times during every month of April, May, June, July, August, September and October after the passing of this Act, (but not including the months of April and May next after the passing hereof), the space between any such wing-rail and railway frog, and between any such guard-rail and any other rail fixed and used alongside thereof as aforesaid, and between all wing-rails where no other rail intervenes, shall, (save only where such space between the heads of any such wing-rail and railway frog as aforesaid, or between the heads of any such guard-rail and other rail fixed and used alongside thereof as aforesaid, or between the 45 50 55

*heads* of any such wing-rails where no other rail intervenes as aforesaid, is ~~to~~ either less than one and three-quarters of an inch or more than five inches in width,) ~~to~~ be filled in with packing ;

5 (3) The running-board on the roof of each box car used for freighting purposes on any such railway, shall at all times after the lapse of twelve months from the passing of this Act, be of a sufficient thickness and strength, and not less than thirty inches in width, 10 and shall, with proper and safe supports, extend the whole length of such car and beyond each end thereof to a point not more than two inches less than that to which the dead-wood or bumpers at each end of such car likewise extend ;

15 And every railway company owning, working or operating within this Province any such railway, shall on and throughout said railway so make, arrange and construct and re-arrange, re-construct and maintain all railway frogs, wing-rails, guard-rails and other rails forming part of such railway or used therewith, 20 and every such space as aforesaid, and the filling in thereof with packing as aforesaid, and the running-board on every such box car as aforesaid in such manner and at such time that the same shall respectively conform to and comply with the requirements in that behalf of this section.

25 7. Where within this Province personal injury is caused to a railway servant, whilst in the employment or service of a railway company, on any railway owned, worked or operated by said railway company, or to any other person lawfully in, upon or about said railway, or any train or car thereon, and such personal injury has been occasioned or arose either wholly or partly 30

Railway company neglecting provisions of the preceding sections to be liable for injury occasioned by such neglect.

(1) By reason of the lower beams or members of the superstructure of any highway, or other overhead bridge, or any other erection or structure over said railway, not being at all times after the lapse of twelve 35 months from the passing of this Act, of a sufficient height from the surface of the rails to admit of an open and clear headway of at least seven feet between the top of the highest freight cars then running on such railway, and the bottom of such lower beams or members; or,

40 (2) By reason of the space between the rails in any railway frog, extending from the point of such frog backward to where the heads of such rails are not less than five inches apart, not being at all times after the lapse of 45 three months from the passing of this Act filled in with packing ; or,

(3) By reason of the space between any wing-rail and any such railway frog, and between any such guard-rail and any other rail fixed and used alongside thereof as aforesaid, and between all wing-rails where no other rail intervenes, (save only where such space between the heads of any such wing-rail and railway-frog as aforesaid, or between *the heads* of any such guard-rail and other rail fixed and used alongside thereof as aforesaid, or between *the heads* of any such wing-rails where 50 no other rail intervenes as aforesaid, is ~~to~~ either less than one and three-quarters of an inch or more than five inches in width,) ~~to~~ not being at all times during 55

every month of April, May, June, July, August, September and October, excepting the months of April and May next after the passing hereof, filled in with packing; or

- (4) By reason of the running-board on the roof of any box car used for freighting purposes on any such railway, after the lapse of twelve months from the passing of this Act, not being of a sufficient thickness and strength, and at least thirty inches in width, and with proper and safe supports, extending the whole length of such car and beyond each end thereof to a point not more than two inches less than that to which the dead-wood or bumpers at each end of such car shall then be likewise extending,

such railway servant or other person, or in case the injury results in death, the legal personal representatives of such servant or other person, and any persons entitled in case of death, shall be entitled to recover from such railway company compensation for all damages and loss sustained from or by reason of such injury; and where any such injury has been so caused to or suffered by any such railway servant, the right of compensation and the remedies against the railway company shall be the same as if such railway servant had not been a servant of, nor in the employment of the railway company, nor engaged in its work.

When railway not liable for default.

8. A railway servant shall not be entitled, under this Act, to any right of compensation or remedy against the railway company of which he is such servant in any of the following cases, that is to say :

- (1) Unless the default, matter, or thing wholly or partly occasioning the personal injury as mentioned in section seven of this Act, arose from or had not been discovered or remedied, owing to the negligence of such railway company, or of some person in the service of and entrusted by the railway company with the duty of seeing that such default, matter or thing did not happen, occur or exist ;
- (2) In any case where the railway servant knew of the matter, default or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the railway company or some person superior to himself in the service of the railway company, unless he was aware that the railway company or such superior already knew of the said matter, default or negligence ;
- (3) In any case where such matter, default or negligence was occasioned by his own act, omission or negligence.

Limit of compensation for injury.

9. The amount of compensation recoverable under this Act, in the case of injury to any railway servant as aforesaid, shall not exceed such sum as may be found equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade, employed during those years in the like employment, and within this Province.

Limitation of actions.

10. An action for the recovery, under this Act, of compensation for an injury, shall not be maintainable unless the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death.



No. 101.

2nd Session, 4th Legislature, 44 Vic., 1881.

BILL.

An Act to make provision for the safety of  
Railway Employees and the Public.

First Reading, 7th February, 1881.

Second " 17th " 1881.

Mr. FRASER.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act for Protecting the Public Interest in Rivers,  
Streams and Creeks.

HER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows:—

1. So far as the Legislature of Ontario has authority so to  
5 enact, all persons shall, subject to the provisions in this Act  
contained, have, and are hereby declared always to have had,  
during the spring, summer and autumn freshets, the right to,  
and may float and transmit saw-logs and all other timber of  
every kind, and all rafts and crafts, down all rivers, creeks and  
10 streams in respect of which the Legislature of Ontario has  
authority to give this power; and in case it may be necessary  
to remove any obstruction from such river, creek or stream,  
or construct any apron, dam, slide, gate-lock, boom, or other  
work therein or thereon, necessary to facilitate the floating  
15 and transmitting such saw-logs and other timber, rafts or crafts,  
down the same, then it shall be lawful for the person requiring  
so to float and transmit such saw-logs and other timber, rafts  
and crafts, and it is hereby declared always to have been lawful,  
20 slide, gate-lock, boom, or other work necessary for the purposes  
aforesaid, doing no unnecessary damage to the said river,  
creek or stream, or to the banks thereof.

All persons  
entitled to use  
rivers for float-  
ing down tim-  
ber and saw-  
logs.

2. In case any person shall construct in or upon such river,  
creek or stream, any apron, dam, slide, gate-lock, boom or other  
25 work, necessary to facilitate the floating or transmission of  
saw-logs or other timber, rafts or crafts, down any such river,  
creek or stream, which was not navigable or floatable before  
such improvements were made, or shall blast rocks, or remove  
shoals or other impediments, or otherwise improve the float-  
30 ability of such river, creek, or stream, such person shall not  
have the exclusive right to the use or control of such river,  
creek or stream, or to such constructions and improvements;  
but all persons shall have, during the spring, summer and  
autumn freshets, the right to float and transmit saw-logs and  
35 other timber, rafts and crafts, down all such rivers, creeks or  
streams, and through and over such constructions and improve-  
ments, doing no unnecessary damage to the said constructions  
and improvements, or to the banks of the said rivers, creeks  
or streams, subject to the payment to the person who has made  
40 such constructions and improvements, of reasonable tolls;

Right to use  
rivers on which  
improvements  
have been  
made for the  
purpose of  
floating down  
timber.

3. The foregoing sections, and all the rights therein given,  
and all the provisions therein made and contained, shall ex-  
Foregoing pro-  
visions to ap-  
ply whether

land patented or not. tend and apply to all rivers, creeks and streams, mentioned in the first section of this Act, and to all constructions and improvements made therein or thereon, whether the bed of such river, creek or stream, or the land through which the same runs, has been granted by the Crown or not, and if granted by the Crown, shall be binding upon such grantees, their executors and assigns. 5

Lieutenant-Governor in Council may fix tolls. 4. The Lieutenant-Governor in Council may fix the amounts which any person entitled to tolls under this Act shall be at liberty to charge on the saw-logs and different kinds of timber, rafts or crafts, and may from time to time vary the same; and the Lieutenant-Governor in Council, in fixing such tolls shall have regard to, and take into consideration, the original cost of such constructions and improvements, as well as the amount required to maintain the same, and to cover interest upon the original cost. 10 15

Provisions of Act to apply to all constructions now or hereafter made. 5. The foregoing provisions of this Act shall apply to all such constructions and improvements as may hitherto have been made, as well as to such as may be in course of construction, or shall hereafter be constructed. 20

All persons driving logs, etc., to have the right to go on river banks. 6. All persons driving saw-logs, or other timber, rafts or crafts, down any such river, creek or stream, shall have the right to go along the banks of any such river, creek or stream, and to assist the passage of the timber over the same by all means usual amongst lumbermen, doing no unnecessary damage to the banks of the said river, creek or stream. 25

Costs of pending suits. 7. If any suit is now pending, the result of which will be changed by the passage of this Act, the court or any judge of such court, having authority over such suit, or over the costs, may order the costs of the suit, or any part thereof, to be paid by the party who would have been required to pay such costs if this Act had not been passed. 30



BILL.

An Act for Protecting the Public Interest in  
Rivers, Streams and Creeks.

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First Reading, 8th February, 1881.

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MR. PARDEE.

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TORONTO:

PRINTED BY C. BLAGETT ROBINSON.

## An Act to amend the Assessment Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section forty-three of the Assessment Act, chapter one hundred and eighty, of the Revised Statutes, is hereby amended by striking out the word "May" in the first line, and inserting in its place "June." R. S. O., c. 180, s. 43 amended.
2. Sub-section nineteen of section fifty-six of the said Act, is amended, by striking out the word "first" in the fourth line, and inserting in lieu thereof the word "fifteenth." Sec. 56, sub-s. 19 amended.
3. Sub-section seven of section fifty-nine of the said Act, is hereby amended, by striking out the word "first" in the fourth line, and inserting in lieu thereof the word "fifteenth." Sec. 59, sub-s. 7 ed.

BILL.

An Act to amend the Assessment Act.

First Reading, 8th February, 1881.

Mr. ROBERTSON, (*Hulton*).

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act respecting Municipal Debentures.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Where any debentures have heretofore been issued by  
 5 any municipality under any by-law which had been submitted to the ratepayers and heretofore passed by such municipality, and the interest on such debentures and the principal of such thereof (if any) as shall heretofore have fallen due, has been heretofore paid for the period of two years or more, such by-  
 10 law and the debentures issued thereunder, or such thereof as may yet be unpaid, shall be valid and binding upon the corporation, and shall not be quashed or set aside on any ground whatever: Provided, that this clause shall not affect any by-  
 15 law or debt which is the subject of any action or proceeding now pending and brought to quash or set aside such by-law or debenture, or any by-law or debenture, the validity of which is questioned in any suit or proceeding now pending, to which the corporation issuing the same is a party.

Debentures heretofore issued, on which payment has been made for two years, to be good and valid.

Proviso.

2. Every by-law passed by any municipality for contracting  
 20 any debt, by borrowing money or otherwise, and for levying rates for the payment of such debts, on the ratable property of the municipality, shall be registered by the clerk of such municipality, in the registry office for the county or portion of the county in which the county town is situate, or in the  
 25 case of a city having a separate registry office, then in the registry office of such city, within two weeks after the final passing thereof by such municipality; and every such by-law and the debentures issued thereunder, shall be absolutely valid and binding upon such municipality, according to the terms  
 30 thereof, and such by-law shall not be quashed or set aside on any ground whatever, unless an application or suit to quash or set aside the same be made to some court of competent jurisdiction within two months from the registry thereof, and a certificate under the hand and seal of the clerk of the said court,  
 35 stating that such suit or proceeding has been brought shall have been registered in said registry office within such period of two months: Provided, further, that if such suit or proceeding be dismissed, in whole or in part, then the said by-law or so much thereof as is not the subject of said application, or  
 40 not quashed upon such application, shall be absolutely valid and binding, according to the terms thereof, on the expiration of two month from the date of the registration of such by-law; upon the dismissal of any such suit or proceeding, a certificate to that effect may be registered in the said registry office.

By-laws creating debts to be registered.

Manner of registration.

3. Said by-laws shall be registered in the way and manner provided by the Revised Statutes of Ontario, chapter one hundred and seventy-six, and the registrar shall be paid the sum of two dollars for registration thereof.

Form of certificate of pending suit.

4. The certificate first referred to, in the second section hereof, shall be in the form or to the effect following:— 5  
In the (*name of court*)

This is to certify that in a certain suit or proceeding in this court, entitled \_\_\_\_\_ the validity of by-law No. \_\_\_\_\_ of the \_\_\_\_\_ entitled a by-law 10  
has been called in question (*if a portion only of the by-law is called in question, state the fact*).

Dated,

(Signed), A. B.  
Clerk of

{ Seal. }

15

And the certificate of dismissal of such suit or proceeding shall be in the form or to the effect following:—

In the (*name of court*)

I hereby certify that the suit or proceeding in this court, entitled \_\_\_\_\_ calling in question the 20  
validity of \_\_\_\_\_ by-law No. \_\_\_\_\_ of the \_\_\_\_\_ has been dismissed (*or if dismissed in part and granted in part, set out the order made, verbatim*).

Dated,

(Signed,) A. B.  
Clerk of

{ Seal. }

25

And the registrar shall be entitled to the sum of fifty cents for registering either of said certificates.

R. S. O., c. 174 s. 320, repealed and new section substituted

5. Section three hundred and twenty of the Municipal Act 30 is hereby repealed and the following substituted therefor:—

The notice to be appended to every copy of the by-law for the purpose aforesaid shall be to the effect following:—

Notice.—The above is a true copy of a by-law passed by the municipal council of the \_\_\_\_\_ of \_\_\_\_\_ 35  
on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18  
and approved by His Honour, the Lieutenant Governor in Council, on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18  
(where such approval is required to give effect to such by-law): And all persons are hereby required to take notice 40  
that any one desirous of applying to have such by-law, or any part thereof, quashed, must make his application for that purpose to one of her Majesty's superior courts of common law, at Toronto, within one month next after the publication of this notice once a week for three successive weeks, in the news- 45  
paper called the \_\_\_\_\_ or he will be too late to be heard in that behalf.

Sec. 321 amended.

6. Section three hundred and twenty-one of the said Act is hereby amended, by striking out the words, "before the end of the term," in the second line, and substituting therefor the 50 words, "within one month."

7. Section three hundred and eighty-eight of the said Act is hereby amended, by striking out all the words after "said by-law," in the seventh line, and substituting the following, "has received the assent of the electors where necessary, and  
5 that no successful application has been made to quash the same within the time limited in the notice of promulgation."

Sec. 388  
amended.

8. Should the council of any municipality not cause the promulgation of any by-law, by publication as required by sections three hundred and nineteen and three hundred and  
10 twenty of the said Act, within weeks  
after being thereto required, in writing, by any ratepayer of the municipality, then such ratepayer or any other ratepayer may cause such by-law to be promulgated by publication for the same time in any such newspaper mentioned in section  
15 three hundred and nineteen as he may designate, and may affix his signature as a ratepayer to the notice required by section three hundred and twenty, and such promulgation shall have the like effect as if done by a resolution of the council of such municipality.

Publication of  
by-law by  
ratepayer in  
case of neglect  
by council.

20 9. All Acts or parts of Acts at variance with this Act are hereby repealed.

Inconsistent  
enactments re-  
pealed.

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2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act respecting Municipal Debentures.

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First Reading, 9th February, 1881.

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Mr. GIBSON, (*Hamilton*).

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TORONTO:

PRINTED BY G. BLACKETT ROBINSON.

## An Act respecting Municipal Debentures.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Where any debentures have heretofore been issued by  
 5 any municipality under any by-law passed by such municipality,  
 and the interest on such debentures and the principal of such  
 thereof (if any) as shall heretofore have fallen due, has been  
 heretofore paid for the period of two years or more, *by the*  
*municipality*, such by-law and the debentures issued thereun-  
 10 der, or such thereof as may yet be unpaid, shall be valid and  
 binding upon the corporation, and shall not be quashed or set  
 aside on any ground whatever: Provided, that this clause shall  
 not affect any by-law, *debenture*, or debt which is the subject of  
 any action or proceeding now pending and brought to quash  
 15 or set aside such by-law or debenture, or any by-law or  
 debenture, the validity of which is questioned in any suit or  
 proceeding now pending, to which the corporation issuing the  
 same is a party.
2. Every by-law passed by any municipality for contracting  
 20 any debt, by *the issue of debentures for a longer term than*  
*one year*, borrowing money or otherwise, and for levying  
 rates for the payment of such debts, on the ratable property  
 of the municipality, *or any part thereof*, shall be registered by  
 the clerk of such municipality, *if a county*, in the registry  
 25 office for the county in which the county town is situate,  
 or in case of local municipalities in the registry office of the  
 registration division in which the local municipality is situ-  
 ate, within two weeks after the final passing thereof by  
 such municipality; and every such by-law and the debent-  
 30 ures issued thereunder, shall be absolutely valid and binding  
 upon such municipality, according to the terms thereof,  
 and such by-law shall not be quashed or set aside on  
 any ground whatever, unless an application or suit to quash or  
 set aside the same be made to some court of competent juris-  
 35 diction within *three* months from the registry thereof, and a cer-  
 tificate under the hand and seal of the clerk of the said court,  
 stating that such suit or proceeding has been brought shall  
 have been registered in said registry office within such period  
 of two months: Provided, further, that if such suit or proceed-  
 40 ing be dismissed, in whole or in part, then the said by-law or  
 so much thereof as is not the subject of said application, or  
 not quashed upon such application, shall be absolutely valid  
 and binding, according to the terms thereof, on the expiration  
 of two months from the date of the registration of such by-law;  
 45 upon the dismissal of any such suit or proceeding, a certificate  
 to that effect may be registered in the said registry office:

Debentures  
 heretofore  
 issued, on  
 which pay-  
 ment has been  
 made for two  
 years, to be  
 good and valid.

Proviso.

By-laws creat-  
 ing debts to be  
 registered.

Provided further that notice of the passing of every by-law to which this section refers, and which has not been submitted to the ratepayers, shall immediately after the registration of such by-law be published in some public newspaper, published either within the municipality, or in the county town, or in a public newspaper in an adjoining local municipality, as the council may by resolution designate, and the publication shall, for the purpose aforesaid, be continued in at least one number of such paper each week, for three successive weeks.

Form of notice.

3. The notice required to be published by the foregoing section, shall be in the form following or to the like effect :

Notice is hereby given that a by-law was passed by the  
of of on the  
day of A.D., 18 , providing for the issue of  
detentures to the amount of \$ for 15  
the purpose of and that such by-law was  
registered in the registry office of the county  
of on the day of  
A.D., 18

Clerk. 20

Manner of registration.

4. Said by-laws shall be registered in the way and manner provided by the Revised Statutes of Ontario, chapter one hundred and seventy-six, and the registrar shall be paid the sum of two dollars for registration thereof.

Form of certificate of pending suit.

5. The certificate first referred to, in the second section hereof, shall be in the form or to the effect following:—  
In the (*name of court*) 25

This is to certify that in a certain suit or proceeding in this court, entitled the validity of by-law No  
of the entitled a by-law 30  
has been called in question (*if a portion only of the by-law is called in question, state the fact*).

Dated,

(Signed), A. B.  
Clerk of

{ Seal. }

35

Form of certificate of dismissal of suit.

And the certificate of dismissal of such suit or proceeding shall be in the form or to the effect following:—  
In the (*name of court*)

I hereby certify that the suit or proceeding in this court, entitled calling in question the  
validity of by-law No. of the  
has been dismissed (*or if dismissed in part and granted in part, set out the order made, verbatim*). 45

Dated,

(Signed,) A. B.  
Clerk of

{ Seal. }

And the registrar shall be entitled to the sum of fifty cents for registering either of said certificates. 50

6. Section three hundred and twenty of the Municipal Act is hereby repealed and the following substituted therefor:—

R. S. O., c.  
174 s 320, re-  
pealed and  
new section  
substituted

The notice to be appended to every copy of the by-law for the purpose aforesaid shall be to the effect following:—

- 5 Notice.—The above is a true copy of a by-law passed by the municipal council of the \_\_\_\_\_ of \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18  
and approved by His Honour, the Lieutenant Governor in Council, on the \_\_\_\_\_ day of \_\_\_\_\_ A.D.  
10 18 (where such approval is required to give effect to such by-law): And all persons are hereby required to take notice that any one desirous of applying to have such by-law, or any part thereof, quashed, must make his application for that purpose to one of her Majesty's superior courts of common law,  
15 at Toronto, within *two* months next after the publication of this notice once a week for three successive weeks, in the newspaper called the \_\_\_\_\_ or he will be too late to be heard in that behalf.

7. Section three hundred and twenty-one of the said Act is hereby amended, by striking out the words, "before the end of the term," in the second line, and substituting therefor the words, "within *two* months."

Sec. 321  
amended.

8. Section three hundred and eighty-eight of the said Act is hereby amended, by striking out all the words after "said by-law," in the seventh line, and substituting the following, "has received the assent of the electors where necessary, and that no successful application has been made to quash the same within the time limited in the notice of promulgation."

Sec. 388  
amended.

9. All Acts or parts of Acts at variance with this Act are hereby repealed.

Inconsistent  
enactments re-  
pealed.

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2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act respecting Municipal Debentures.

*(Reprinted as amended.)*

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First Reading, 9th February, 1881.

Second " 21st " 1881.

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Mr. GIBSON (*Hamilton*).

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TORONTO :

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Ontario Drainage Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The thirty-sixth section of chapter thirty-three, of the Revised Statutes of Ontario, entitled "An Act respecting the Expenditure of public money for Drainage Works," is hereby repealed, and the following substituted therefor:

R.S.O. c. 33,  
s. 36 repealed,  
and new section substituted.

The respective sums of money which, by the said assessment roll, are specified as the proportions or contributions payable in respect of the roads or several parcels or lots of land so drained, or improved by drainage, or by any works under the Act respecting the Public Works of Ontario, towards the total amount of the sums expended on and about such drainage or improvements as aforesaid, shall be charged on such several parcels or lots of land, and that in preference to and with priority over all incumbrances on such land, in manner following, that is to say, each several parcel or lot of land shall be charged with a payment to Her Majesty of a rent-charge after the rate of seven dollars and sixty cents per annum rent for every one hundred dollars charged on such several parcels or lots, or roads, and so in proportion for every less amount, to be payable for the term of twenty-two years, to be computed from the first day of January next before the date hereinafter fixed for making the first payment; the first of such payments to be made on the first day of January next after the day a copy of the assessment roll was deposited, in pursuance of section thirteen, with the clerk of the municipality which, or the inhabitants of which, applied for the drainage, such payment to be for the preceding year.

2. The fortieth section of the said Act is hereby repealed and the following substituted therefor:

Sec. 40 repealed and new section substituted.

If the assessment roll is not revised in time to place the instalment of rent-charge payable for the current year, or for any previous year in the collector's roll, or if for any cause any such instalment or instalments is or have been left off the roll for the proper year or years, then such instalment or instalments, with five per centum added thereto, shall, in addition to the instalment for such year be placed on the collector's roll, when a collector's roll is next made out, unless the Lieutenant-Governor in Council shall take action under the next succeeding section.

3. Wherever it appears to the Lieutenant-Governor in Council that it would be inexpedient to levy in one year the

Lieutenant-Governor in Council may

postpone pay-  
ment of ar-  
rears.

full amount of the arrears, he may direct that the same, with interest duly compounded at five per centum per annum, in accordance with the rules for calculating annuities, should be spread over the whole or part of the term of twenty-two years then unexpired, or that the commencement of the term should be postponed so that such period of twenty-two years shall be computed from some first day of January subsequent to the day upon which it would be computed under the thirty-sixth section of the said Act, as amended by this Act. 5

Proportion in  
which items of  
assessment are  
to be increased  
to be stated in  
Order in Coun-  
cil.

4. The Lieutenant-Governor in Council shall thereupon, by the same order, or by a subsequent order, state the proportion in which each item in the assessment roll shall be increased, and the number of years for which such increase shall take effect, and a certified copy of any order passed under the preceding sections, shall be attached to the duplicate roll in their respective offices, by the Commissioner of Public Works, the registrar, and the clerk of each municipality, with whom a duplicate of the roll had been deposited. 15

Increased  
amount a first  
charge on  
lands.

5. The several parcels or lots of land and roads mentioned in the assessment roll shall each thereafter be charged with 20 such increased amount as a rent-charge, in lieu of the amount with which it is charged under the assessment roll for the term mentioned in the Order in Council and in preference to and with priority over all incumbrances.

Correction by  
judge of  
errors in roll.

6. If, after the assessment roll has been deposited with the registrar or the Commissioner of Public Works, it is found that through mistake, inadvertence, or otherwise, the amounts set opposite the several parcels or lots of land and roads do not in the aggregate amount to the sum which should have been charged in respect of the drainage or other works, or exceed the same, the judge of the county court of the county may, upon the application of the Commissioner of Public Works, or of any municipal council interested, cause to be produced before him the several copies of the assessment roll, and shall correct the errors therein, by striking out any incorrect amounts and inserting in their stead, in different coloured ink, the correct amounts. 30 35

Amounts  
settled by  
judge to be  
substituted for  
amounts in  
roll.

7. The amounts so settled by the judge shall thereafter be substituted for the amounts named in the assessment roll.

Judge may in  
certain cases  
order a gener-  
al increase  
or decrease of  
amounts in  
the roll.

8. If the error is of such a nature that it can be corrected by making an indorsement that all the amounts in the roll, or any particular class thereof, should be increased or decreased in a uniform proportion, the judge may, instead of altering all the figures, write upon the face of the roll an order directing such increase or decrease, and such amounts shall thereupon be deemed to be increased or decreased in accordance with the said order. 40 45

Power and  
authority of  
judge.

9. The judge, upon the said application, shall have authority to take evidence under oath, and shall, where he considers it necessary, cause notice to be given to any of the persons whose assessments it is proposed to increase, but when the question to 50

be discussed affects a number of persons it shall not be necessary to direct more than one of such class of persons to be notified; and where, in the opinion of the judge, the council sufficiently represents the interest of all the persons assessed, or the interest  
5 of any particular class, he need not cause any person, or any person of such class to be notified.

**10.** The provisions of the thirty-seventh, thirty-eighth, and thirty-ninth sections of the said Act shall apply to the rents-charge substituted under this Act for the rents-charge in the  
10 assessment roll.

Provisions as  
to rents-  
charge.

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2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to amend the Ontario Drainage  
Act.

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First Reading, 9th February, 1881.

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Mr. FRASER.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Ontario Drainage Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. The thirty-sixth section of chapter thirty-three, of the Revised Statutes of Ontario, entitled "An Act respecting the Expenditure of public money for Drainage Works," is hereby repealed, and the following substituted therefor :

R.S.O. c. 33,  
s. 36 repealed,  
and new section substituted.

The respective sums of money which, by the said assessment roll, are specified as the proportions or contributions payable in respect of the roads or several parcels or lots of land so drained, or improved by drainage, or by any works under the Act respecting the Public Works of Ontario, towards the total amount of the sums expended on and about such drainage or improvements as aforesaid, shall be charged on such several parcels or lots of land, and that in preference to and with priority over all incumbrances on such land, in manner following, that is to say, each several parcel or lot of land shall be charged with a payment to Her Majesty of a rent-charge after the rate of seven dollars and sixty cents per annum rent for every one hundred dollars charged on such several parcels or lots, or roads, and so in proportion for every less amount, to be payable for the term of twenty-two years, to be computed from the first day of January next before the date hereinafter fixed for making the first payment ; the first of such payments to be made on the first day of January next after the day a copy of the assessment roll was deposited, in pursuance of section thirteen, with the clerk of the municipality which, or the inhabitants of which, applied for the drainage, such payment to be for the preceding year.

2. The fortieth section of the said Act is hereby repealed, and the following substituted therefor :

Sec. 40 repealed and new section substituted.

If the assessment roll is not revised in time to place the instalment of rent-charge payable for the current year, or for any previous year, in the collector's roll, or if for any cause any such instalment or instalments is or have been left off the roll for the proper year or years, then such instalment or instalments, with five per centum *per annum* added thereto, shall, in addition to the instalment for such year be placed on the collector's roll, when a collector's roll is next made out, unless the Lieutenant-Governor in Council shall take action under the next succeeding section.

3. Wherever it appears to the Lieutenant-Governor in Council that it would be inexpedient to levy in one year the

Lieutenant-Governor in Council may

postpone payment of arrears.

full amount of the arrears, he may direct that the same, with interest duly compounded at five per centum per annum, in accordance with the rules for calculating annuities, should be spread over the whole or part of the term of twenty-two years then unexpired, or that the commencement of the term should be postponed so that such period of twenty-two years shall be computed from some first day of January subsequent to the day *from* which it would be computed under the thirty-sixth section of the said Act, as amended by this Act. 5

Proportion in which items of assessment are to be increased to be stated in Order in Council.

4. The Lieutenant-Governor in Council shall thereupon, by the same order, or by a subsequent order, state the proportion in which each item in the assessment roll shall be increased, and the number of years for which such increase shall take effect, and a certified copy of any order passed under the preceding sections, shall be attached to the duplicate roll in their respective offices, by the Commissioner of Public Works, the registrar, and the clerk of each municipality, with whom a duplicate of the roll had been deposited. 10 15

Increased amount a first charge on lands.

5. The several parcels or lots of land and roads mentioned in the assessment roll shall each thereafter be charged with such increased amount as a rent-charge, in lieu of the amount with which it is charged under the assessment roll for the term mentioned in the Order in Council and in preference to and with priority over all incumbrances. 20

Correction by judge of errors in roll.

6. If, after the assessment roll has been deposited with the registrar or the Commissioner of Public Works, it is found that through mistake, inadvertence, or otherwise, the amounts set opposite the several parcels or lots of land and roads do not in the aggregate amount to the sum which should have been charged in respect of the drainage or other works, or exceed the same, the judge of the county court of the county may, upon the application of the Commissioner of Public Works, or of any municipal council interested, cause to be produced before him the several copies of the assessment roll, and shall correct the errors therein, by striking out any incorrect amounts and inserting in their stead, in different coloured ink, the correct amounts. 25 30 35

Corrected amounts to be substituted.

7. The amounts so settled by the judge shall thereafter be substituted for the amounts named in the assessment roll.

Judge may in certain cases order a general increase or decrease of amounts in the roll.

8. If the error is of such a nature that it can be corrected by making an indorsement that all the amounts in the roll, or any particular class thereof, should be increased or decreased in a uniform proportion, the judge may, instead of altering all the figures, write upon the face of the roll an order directing such increase or decrease, and such amounts shall thereupon be deemed to be increased or decreased in accordance with the said order. 40 45

Power and authority of judge.

9. The judge, upon the said application, shall have authority to take evidence under oath, and shall, where he considers it necessary, cause notice to be given to any of the persons whose assessments it is proposed to increase, but when the question to 50

be discussed affects a number of persons it shall not be necessary to direct more than one of such class of persons to be notified; and where, in the opinion of the judge, the council sufficiently represents the interest of all the persons assessed, or the interest of any particular class, he need not cause any person, or any person of such class to be notified.

10 **10.** The provisions of the thirty-seventh, thirty-eighth, and thirty-ninth sections of the said Act shall apply to the rents-charge substituted under this Act for the rents-charge in the assessment roll. Provisions as to rents-charge.

 **11.** Every order in Council made under the terms of this Act shall, as soon as conveniently may be after the making of such order, be laid before the Legislative Assembly. Orders in Council to be laid before Legislative Assembly.

15 **12.** In case the council of the municipality shall have omitted to file with the registrar of the county, or with the Commissioner of Public Works, a duplicate of the assessment roll within the time specified in the thirty-fourth section of the said Revised Statute, such omission shall not be held in any way to invalidate the assessment, but the council shall forthwith, as soon as their attention is called to such omission, file such duplicate or duplicates in accordance with the provisions of the said section.  Assessment not invalidated by omission to file roll.

BILL.

An Act to amend the Ontario Drainage  
Act.

*(Reprinted as amended.)*

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First Reading, 9th February, 1881.

Second " 18th February, 1881.

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Mr. FRASER.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Municipal Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section five hundred and twenty-six of the Municipal Act is hereby amended by adding after the word "sell" in the second line, the words "or lease." R. S. O., c.174, s. 526, amended.
2. Sub-section two of the said section is amended by adding after the word "sale" in the first line thereof, the words "or lease." Sec. 526, sub-s. 2, amended.
3. Sub-section three of the said section is amended by adding after the word "conveyance" in the first line thereof, the words "or lease," and by striking out the words "to the purchaser or purchasers." Sec. 526, sub-s. 3, amended.

BILL.

An Act to amend the Municipal Act.

First Reading, 10th February, 1881.

Mr. BOULTER.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act respecting Civil Engineers.

WHEREAS it is expedient with a view to the proper and efficient qualification of civil engineers in the Province of Ontario that the same should be regulated by statute: Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The term, civil engineer, means any person duly authorized under the provisions of this Act to practise the art and profession of civil engineering, which consists of making surveys for the location, as well as data for designs, specifications and estimates of works of art, and constructing and maintaining the same, in the Province of Ontario.

1st.—The term, works of art, means roads, railways, canals, slides, harbours of refuge,—all works for the safety and improvement of navigation, drainage, irrigation, waterworks, and all other works or structures appertaining or subsidiary thereto.

2nd.—The term, preliminary examination, means the examination required of persons wishing to be indentured to learn civil engineering.

3rd.—The term, final examination, means the examination at which candidates obtain commissions or diplomas (as the case may be) as civil engineers.

4th.—The term, board or board of examiners, means the board of examiners for the examination of applicants to admission to the profession and practice of civil engineering.

2. Civil engineering may be divided into departments or branches; and civil engineers into grades or classes.

3. The following persons shall be civil engineers in grade A, within the meaning of this Act, namely:—

Walter Shanly, T. Trudeau, Samuel Keefer, Sandford Fleming, J. L. P. O'Hanly, John Page, Thomas Guerin, Marcus Smith, T. C. Keefer, Frank Shanly, Kivas Tully, Charles Bailarge, Peter Grant, Charles E. Legge, and all other persons who shall obtain a diploma or commission in the manner hereinafter provided shall be civil engineers.

4. Within thirty days of the passing of this Act, the Lieutenant-Governor in Council shall appoint eight of the above named civil engineers who, with the Commissioner of Public Works, and the Professors of Civil Engineering, Mineralogy and Geology, and Natural History, of the School of Practical Science, Toronto, shall form a board of examiners for the examination of candidates to practise as civil engineers, and of students desirous of being indentured to civil engineers.

- Meetings of examiners.** 5. The board of examiners shall meet in the city of Toronto, twice at least, in each year, and at any other time to which the board may adjourn, or at any time at which the board may be convened by the Commissioner of Public Works, who shall *ex officio* be president of the board, due notice of the meeting being given in the *Ontario Gazette*. 5
- Oath to be taken by examiners.** 6. Each member of the board shall take an oath of office, in the form Schedule A, to be administered before any judge of the Superior Courts of Ontario, who is hereby authorized and required to administer the same. 10
- Quorum.** 7. At any session of the board for the examination of candidates for the final or preliminary examinations, three shall form a quorum; but for any other business not less than six shall constitute a quorum.
- First meeting of board.** 8. The president of the board, by notice in the *Ontario Gazette*, shall call the board together for organization, within fifteen days of the appointment of the members of the board by the proclamation of the Lieutenant-Governor in Council. 15
- Appointment of Secretary.** 9. The board shall appoint a secretary who shall keep a record of their proceedings. 20
- Admission of students.** 10. No person shall be admitted as an indentured student to any civil engineer unless he has previously passed an examination before the board of examiners, or before one of the members thereof on the following subjects:—Arithmetic, algebra, geometry, trigonometry, mensuration, and the elementary principles of mechanics; and has obtained a certificate of such examination in form Schedule B from such board. 25
- Admission of civil engineers and subjects for examination.** 11. No person shall receive a commission from the said board authorizing him to practise as a civil engineer, except the persons already named in this Act, until he has attained the full age of 21 years, and has passed a satisfactory examination before the said board on the following subjects, that is to say:— 30
- 1st.—SURVEYING:—Comprising (1) Description of instruments, their use and adjustment; (2) Engineering, surveying (preliminary and location), and keeping field books. 35
- 2nd.—LEVELLING:—Comprising (1) levelling instruments, their use and adjustment; (2) practice of levelling, including cross sections and contours; (3) keeping level books.
- 3rd.—DRAWING AND PLOTTING:—Comprising (1) instruments for drawing and their use; (2) plotting surveys and making plans; (3) plotting levels and making sections; (4) making working plans and sections; (5) detail drawings of structures; (6) mechanical drawing; (7) principles of perspective, projection and shadows. 40
- 4th.—ESTIMATING:—Comprising (1) taking out quantities from drawings; (2) measuring quantities from the works; (3) measuring and calculating artificers' work; (4) measuring and calculating earth-work; (5) estimating the cost of works. 45
- 5th.—STATICS:—Comprising (1) Composition and resolution of forces; (2) moments of forces; (3) parallel forces and centre of gravity. 50
- 6th.—STABILITY OF STRUCTURES:—Comprising (1) General conditions of stability; (2) stability of polygonal framings; (3) stability of arches, and abutments and piers and retaining walls.

7th.—STRENGTH OF MATERIALS:—Comprising (1) Resistance to tensile and crushing strains; (2) elasticity and elongation of bodies subjected to a tensile, crushing, or transverse strain; (3) deflection of bodies under a transverse strain; (4) resistance to  
5 torsion.

8th.—KNOWLEDGE OF THE MATERIALS USED IN CONSTRUCTION:—Comprising (1) Metals; (2) timber; (3) natural stones; (4) artificial stones, including brick, concrete and cement; (5) materials for earth works; (6) Materials for roads and pave-  
10 ments.

9th.—DIFFERENT KINDS OF CONSTRUCTION:—Comprising (1) Masonry; (2) brickwork; (3) foundations; (4) carpentry.

10th.—AUXILIARIES USED IN CONSTRUCTION:—Comprising

(1) Scaffolding; (2) centerings; (3) coffer-dams and caissons.  
15 11th.—DYNAMICS:—Comprising (1) *vis. viv.*, momentum and work; (2) motion and gravitation; (3) collision and impact of moving bodies; (4) motion down inclined planes and on curves; (5) motion about fixed centres—centres of percussion, oscillation and gyration.

20 12th.—MOVING FORCES:—Comprising (1) Water as a mechanical agent; (2) air as a mechanical agent; (3) animal strength as a mechanical agent; (4) heat as a mechanical agent; (5) the steam engine.

13th.—RESISTANCE TO MOTION:—Comprising (1) Friction;  
25 (2) resistance of the medium through which the body moves.

14th.—THEORY OF MACHINES:—Comprising (1) Elements of machinery; (2) teeth of wheels, racks and pinions; (3) transmission of work by machinery; (4) determining the modulus of a machine in motion; (5) expedients for transmitting or chang-  
30 ing motion; (6) proportioning the strength and dimensions of machinery.

15th.—MACHINES EMPLOYED IN ENGINEERING:—Comprising (1) Machines for transporting and raising materials, as crabs, cranes and dredging machines; (2) machines used  
35 in construction, as pile-driving engines, steam shovels, steam drillers, pumps, diving machines and cement mills; (3) machines for working on materials, such as lathes, boring, planing, riveting, mortising, screw-cutting and sawing machines; (4) tools for excavating, boring, working in wood,  
40 stone and iron.

16th.—ROADS:—Comprising (1) Selection of route; (2) laying out and fixing the grades; (3) construction, repairing and draining the road; (4) different kinds of pavement or road metal.

17th.—RAILWAYS:—Comprising (1) Selecting the route and  
45 arranging the curves and gradients; (2) on the general construction of the substructure; (3) on the permanent way; (4) on draining the line and maintenance.

18th.—CANALS:—Comprising (1) The determination of the line; (2) arrangement of levels and form of section; (3) construction of canals; (4) locks, saving water and getting feeders;  
50 (5) construction of aqueducts; (6) repairs and preservation of canals.

19th.—HARBOURS AND DOCKS:—Comprising (1) The construction of piers, breakwaters and quay walls; (2) deepening  
55 harbours by excavation or dredging; (3) the site of docks and their arrangement, construction of locks and gates and sluices; (4) construction of dock walls.

20th.—BRIDGES:—Comprising (1) Site and kind of bridge;  
(2) construction of stone and brick bridges; (3) construction

of timber and iron bridges; (4) construction of suspension bridges; (5) construction of railway viaducts; (6) foundations of bridges.

21st.—TUNNELS:—Comprising (1) Form and dimensions; (2) method of excavating; (3) sinking shafts and driving headings; (4) draining; (5) subaqueous tunnels. 5

22nd.—HYDRAULICS:—Comprising (1) Hydrostatics; (2) hydrodynamics; (3) pneumatics.

23rd.—DRAINAGE AND IRRIGATION:—Comprising (1) Draining agricultural districts; (2) improvement of outfall and diversion of water from other districts; (3) surface drainage, catch-water drains, and under-draining; (4) drainage of bogs and marshes; (5) reclaiming lands from seas, lakes and rivers; (6) drainage of towns; (7) the forms, dimensions and declivity proper for sewers; (8) collection and disposal of the sewage. 15

24th.—SUPPLY OF WATER TO TOWNS:—Comprising (1) The choice of supply; (2) different sources of supply; (3) estimating the quantity required; (4) the systems of supply; (5) site and construction of reservoirs; (6) filtering the water and constructing the filter beds; (7) the motion of water in pipes and their discharge. 20

25th.—MARINE ENGINEERING:—Comprising (1) Action of waves and currents on the shore, on beaches, on vertical, sloping and curved walls and other obstacles; (2) on the regime of coasts and their preservation; (3) on the form of sea-walls, embankments, breakwaters, piers and other structures exposed to the action of waves; (4) the causes of shoals and bars, the means of removing them and keeping harbours free of them; (5) on the construction and arrangement of lighthouses. 25

26th.—IMPROVEMENT OF RIVERS:—Comprising (1) On the regime of rivers; (2) on the form of shoreline and its improvement; (3) on the velocity of the stream, its scouring and transporting power compared with the nature of its bed; (4) effects of projections and obstructions, as dams and weirs; (5) the forming and removing of shoals and their cause; (6) artificial scouring and sluicing; (7) the shoals at mouths of rivers, their cause and prevention. 30

27th.—MATHEMATICS:—Comprising (1) Arithmetic; (2) mensuration of superficies and solids; (3) algebra; (4) plane and solid geometry; (5) plane and spherical trigonometry; (6) elements of analytical geometry; (7) elementary principles of the differential and integral calculus. 40

28th.—NATURAL SCIENCES:—Comprising (1) Elements of chemistry; (2) elements of geology and mineralogy; (3) elementary principles of the metallurgy of iron and steel. 45

Who entitled to be examined for final examination.

12. No person shall be entitled to be examined before the said board for final examination (except as hereinafter provided) unless he shall have previously served regularly and continuously for and during the period of five years under articles in writing, in form Schedule C, as a student to a civil engineer in the actual practice of his profession, nor unless he shall produce a certificate from said engineer of his having so served during the said period, and testimonials, satisfactory to the board, of his moral character. 50

Transfer of articles.

13. Any civil engineer to whom a student is articulated may transfer the indentures to another civil engineer with the consent of such student; and on each and every such transfer the 55

civil engineer shall give the student a certificate of the time he served under him, the sum of which times so certified shall form the full term of service as required by this Act.

14. Any person practising as a civil engineer in any of the 5 Provinces of the Dominion of Canada before the passing of this Act, upon his producing evidence satisfactory to the board of his having so practised, shall be eligible for final examination at any meeting of the board. Admission of persons already practising civil engineering.

15. Any land surveyor duly commissioned to practise land 10 surveying in the Province of Ontario, shall not be required to pass the preliminary examination; and shall be eligible to be admitted to final examination upon having served an apprenticeship of two years with a civil engineer and complying with the other conditions required by this Act of candidates for ad- 15 mission to final examination. Admission of land surveyors

16. Undergraduates of any university of this Province are exempt from the preliminary examination required of students to civil engineering. University undergraduates exempt from preliminary examination.

17. Graduates of any university of this Province are ex- 20 empt from the preliminary examination required of students to civil engineering and shall be eligible to be admitted to final examination upon having served three years' apprenticeship with a duly commissioned civil engineer, and complying with the other conditions required by this Act of students to civil 25 engineering. Graduates exempt.

18. Any persons holding a diploma or certificate from any 30 college or university in the Dominion of Canada or in the United Kingdom of great Britain and Ireland, in which a civil engineering course is taught, shall be exempt from the preliminary examination required of students to civil engineering; and shall be admitted to final examination before the said board upon having served three years' apprenticeship with a duly qualified civil engineer, and complied with the other conditions required by this Act of students to civil engineering. Other persons to be exempt.

35 19. Any member of any legally organized institution of civil engineers in England, Scotland or Ireland shall be eligible for final examination without having passed the preliminary examination or without being apprenticed to a duly qualified civil engineer upon complying with the other conditions re- 40 quired by this Act of students to civil engineering. Members of institutions in Great Britain to be eligible for final examination.

20. The board shall be a body corporate and politic under the name of "The Board of Examiners for Civil Engineers." They shall have a common seal; they shall make rules of order for governing their sittings; they shall pass resolutions and 45 make by-laws on the following subjects, and repeal or amend the same, namely:—

1st.—To fix the dates of meetings of the board.

2nd.—To fix the fees to be paid the secretary by students.

3rd.—To fix the time within which indentures must be de- 50 posited with the secretary after their date, and the form thereof to be entered into.

4th.—To fix the time for students to give notice to the secretary for preliminary or final examinations.

Board of examiners and their powers.

5th.—To fix the fees to be paid by students on admission to final and preliminary examination and charge for commission, diploma or certificate as the case may be.

6th.—To divide civil engineering into branches or departments, as railway engineering, canal engineering, harbour engineering, waterworks engineering, drainage engineering, and to establish a curriculum for each branch; and to grant a diploma to any candidate for final examination requiring to be examined only in one or more branches at his option for the practice of such branch or branches only. 5 10

7th.—To classify civil engineers according to qualification and proficiency into three or more grades (A, B, C, &c.) as follows:—(1) Grade A, when the final examination is passed in all the subjects prescribed in this Act, entitling the candidate to a commission and rank as chief engineer; (2) grade B, a first-class diploma in more than one branch entitling the candidate to the rank of chief engineer in such branches; (3) grade C, a first-class diploma in one branch only, entitling the holder to rank as engineer in such branch; (4) Grade D, a second-class diploma in one or more branches entitling the holder to rank as assistant-engineer in such branch or branches. 15 20

8th.—To fix fees to which civil engineers are entitled, according to grade, when not otherwise agreed upon.

9th.—To prosecute all persons contravening the provisions of this Act. 25

10th.—To suspend or dismiss from the practice of his profession any civil engineer whom they may find guilty of gross negligence or corruption in the execution of the duties of his office or other offence: Provided always, that the board shall not suspend or dismiss such engineer without having previously summoned him to appear in order to be heard in his defence, nor without having heard the evidence offered either in support of the accusation, or in behalf of the engineer accused, nor unless a two-third vote of the members present at such meeting is for conviction. The accused may appeal to the Court of Appeal for Ontario to quash the decision of the board. 30 35

11th.—To increase the number of appointed members.

12th.—To increase the quorum.

13th.—To change the form of appointment of members from nomination by the Crown to election by the duly commissioned and authorized members of the civil engineering profession, and make all regulations necessary for carrying out the same. 40

14th.—To institute intermediate examinations if they see fit, and attendance at lectures of the School of Practical Science, Toronto. 45

15th.—To charge an annual fee for membership or right to practise.

Publication of by-laws.

21. All by-laws of the board shall be published in the *Ontario Gazette*. 50

Examination as to actual practice of candidates.

22. The board may examine any candidate for final examination, or any civil engineer to whom such candidate has been indentured, under oath (which oaths may be administered by any member of the board), as to his actual practice, and with regard to his instruments. 55

Commissions to be granted to those passing examination.

23. Each person passing the final examination prescribed by this Act, or by any by-law or by-laws of the board of examiners, shall receive a commission or diploma (as the case may 55

be) from the board, the commission to be in the form of Schedule D, and the diploma in such form as the board may determine ; and each candidate before receiving such commission or diploma shall jointly and severally, with two sufficient sureties to the satisfaction of the board, enter into a bond in the sum of five thousand dollars to Her Majesty, her heirs and successors, conditioned for the due and faithful performance of the duties of his office, and shall take and subscribe the short oath of allegiance and an oath of office, in such form as may be prescribed by the board of examiners, who are hereby authorized and required to determine the same ; and any member of the board may administer the said oaths of office and allegiance.

24. The said commission or diploma shall be registered in the office of the Provincial Registrar ; the said oaths shall be deposited with the secretary of the board ; the said bond shall be kept in the manner prescribed by law, with regard to the bonds given for like purposes by other public officers of the Province, and shall be subject to the same provisions, and shall inure to the benefit of any party sustaining damage by breach of any condition thereof.

Registration  
of commission.

25. From and after the first day of June, in the year one thousand eight hundred and eighty-one, no person, except those duly qualified and authorized under the provisions of this Act, shall practise or act as chief engineer, district engineer, resident engineer, engineer in charge, assistant engineer, or leveller, or draughtsman, for fee, hire, pay or reward, on the construction or maintenance of any works of art or structures within the Province of Ontario, or in the making of surveys for locating or laying out such works of art, or in the making of plans, sections or designs, specifications or estimates for structures or works of art, or in any other capacity as civil engineer in the Province of Ontario, under a penalty of one hundred dollars of lawful money of Canada, with costs, for each and every offence, recoverable at the suit of the board of examiners for civil engineers, or at the suit of any other complainant in any division, county or superior court of the Province within which the work is situate or the person offending resides ; when at the suit of other than the said board of examiners, one-half the fine shall go to the complainant or informant, and the other moiety to the board of examiners ; when the prosecution is at the suit of the said board of examiners the whole fine shall inure to the said board or officer appointed by the said board to receive the same.

Only persons  
qualified here-  
under to prac-  
tise civil engi-  
neering.

26. Each member attending the sessions of said board shall receive five dollars per diem, including his time in going and returning, together with his actual living and travelling expenses ; the secretary shall be paid five dollars per diem of the sittings of the board, which sums shall be paid out of the consolidated fund of the Province, by the Provincial Treasurer, on order of the president of the board, countersigned by the secretary.

Payment to  
board.

27. The officer acting as treasurer for the board shall, on the thirty-first day of December in each year, pay over to the Provincial Treasurer any balance of moneys lying in his hands to the credit of said board, after paying the current expenses of the board, arising from the fees charged to students for examination and fines accruing to the board.

Balance of  
moneys to be  
paid to Pro-  
vincial Treas-  
urer.

## SCHEDULE A.

## OATH OF MEMBERS OF BOARD OF EXAMINERS.

I, A. B., do solemnly swear (*or affirm as the case may be*) that I will discharge the duty of a member of the board of examiners for civil engineers according to law, without fear, favour or affection. So help me God.

## SCHEDULE B.

## CERTIFICATE OF PRELIMINARY EXAMINATION.

This is to certify that A. B. of \_\_\_\_\_ did before the board of examiners for civil engineers, pass his preliminary examination; and is hereby entitled to be indentured to any civil engineer according to law.

In testimony whereof the board of examiners have caused their seal to be attached to this certificate, signed by the president, and countersigned by the secretary at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

C. D., *President.*  
E. F., *Secretary.*

## SCHEDULE C.

## INDENTURE OF APPRENTICESHIP.

(Such form as shall be settled by the board of examiners.)

## SCHEDULE D.

## COMMISSION OF CIVIL ENGINEER.

This is to certify that A. B., of \_\_\_\_\_ hath duly passed his examination before the board of examiners, and hath been found duly qualified to fill the office and perform the duties of civil engineer in grade A, he having complied with all the requirements of the law in that behalf; wherefore he, the said A. B., is hereby duly admitted to the said office, and commissioned for the discharge of the duties, and is by law authorized to practise civil engineering in all its various branches or departments in the Province of Ontario.

In witness whereof the board of examiners have caused their seal to be attached to this commission, and to have the same signed by their president and countersigned by the secretary at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

C. D., *President.*  
E. F., *Secretary.*



BILL.

An Act respecting Civil Engineers.

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First Reading, 10th February, 1881.

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Mr. BADGEROW.

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TORONTO :

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Assessment Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Sub-section four of section six of chapter one hundred and eighty of the Revised Statutes of Ontario, intituled "An Act respecting the assessment of Property," is hereby amended by inserting after the word "grounds" in the first line the words "to the extent of not more than five acres" and striking out the words "or other incorporated seminary of learning."
2. Sub-sections three, thirteen, nineteen, and twenty-three of the said section six are hereby repealed.
3. Section nine of the said Act is hereby amended by striking out the words "in the possession or control of any agent or trustee for or on behalf of any owner thereof who is resident out of this Province," and inserting the words "but owned out of" after the word "within" in the first line thereof.

R. S. O., c. 180,  
s. 6, sub-s. 4,  
amended.

Sec. 6, sub-ss.  
3, 13, 19, and  
23, repealed.

Sec. 9, amend-  
ed.

BILL.

An Act to amend the Assessment Act.

First Reading, 10th February, 1881.

Mr. BELL.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act for further improving the School Law.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The parent or guardian of every child, not less than  
5 seven years nor more than thirteen years of age, is required to cause such child to attend a public school, or any other school in which elementary instruction is given, unless there be some reasonable excuse for non-attendance.
2. Except as hereinafter provided, the time which any such  
10 child is required to attend a public school, is during the whole time in each week for which such school is open for instruction of children, and for the respective periods of twelve weeks in each of the two terms of the public school year;
3. Any person who receives into his house a child of any  
15 other person, under the age of thirteen years, and who is resident with him or in his care or employment, shall be deemed thereby to be subject to the same duty with respect to the elementary education of such child during such residence, and shall be liable to be proceeded against as in the case of  
20 a parent, if he should fail to perform his duty of causing such child to be educated to the extent required of a parent; but the duty of the parent under this Act shall not thereby be affected or diminished and shall continue in full force.
4. A child shall not be required to attend a public school  
25 if such child is under efficient elementary instruction in some other manner, or if such child has been prevented attending school by sickness or other unavoidable cause, or if there is no public school which such child can attend within two miles, measured according to the nearest road from the residence of  
30 such child.
5. Public school boards and rural school trustees may ap-  
point an officer to ascertain and report to the school board or trustees for their information, any parent or other person who has failed and omitted and is failing and omitting  
35 to perform the duty of providing that each child of his, or in his care or employment, between the ages aforesaid, is attending some school or otherwise being under efficient elementary instruction, and it shall be the duty of such officer to notify, personally or by letter, or otherwise, such parent or other per-  
40 son of his neglect or violation of duty and the consequences thereof.

6. No proceeding against any parent or other person for any neglect or violation on his part of the requirements of this Act shall be taken until after the expiration of fourteen days from the time in which he has been so notified, nor until such parent or other person has had an opportunity of attending a meeting of the school board or a committee thereof, or of the trustees, to state his or her reasons for not complying with such notice; but if such parent or other person should, on being so notified, either fail to appear or to satisfy the school board, or committee, or trustees, that this neglect or violation of duty has arisen from any of the grounds on which he would be excused, it shall be the duty of the public school board or trustees, through their said officer, to make complaint of such neglect or violation of duty to the police magistrate or a justice of the peace, having jurisdiction under the *Act respecting summary convictions before justices of the peace*, and such police magistrate and justice shall possess and exercise all the powers conferred by the two hundred and eleventh section of the Public Schools Act.

7. With respect to proceedings for any offence or penalty under the provisions of this Act, where a child is apparently of the age alleged, for the purposes of such proceeding it shall lie with the defendant to prove that the child is not of such age.

8. It shall be the duty of every township council to cause the assessor of the township in preparing the annual assessment roll thereof, to set down therein, in a separate column, the number of children whose ages are over sixteen and under twenty-one, in addition to the column for those over five and under sixteen years.

9. The following sections of the Public Schools Act, are hereby respectively amended, that is to say, the one hundred and forty-fifth in the first line thereof, so as to read, "at the first election, two fit and proper persons, and at every subsequent election, one fit and proper person." The seventy eighth section, in sub-section fourteen, by striking out "thereon," and inserting "upon the formation or alteration of a union school section," and the two hundred and fortieth section by substituting "December" for "January."

10. To remove doubts, it is hereby declared, that in any case when under the eighteenth section of the *Assessment Act* land is assessed against both the owner and occupant, or owner and tenant, then such occupant or tenant shall be deemed and taken to be as the person primarily liable for the payment of school rates and for determining whether such rates shall be applied to public or separate school purposes, and no agreement between the owner or tenant as to the payment of taxes as between themselves shall be allowed to alter or affect this provision otherwise, but in any case where no such agreement exists, and where as between the owner and tenant or occupant, the owner is not to pay taxes, if by the default of the tenant or occupant to pay the same, the owner is compelled to pay any such school rate he may direct, the same to be applied to either public or separate school purposes.

11. It shall be the duty of every county council to provide and levy in each year, in aid of each county model school established in such county, under the regulations of the Education Department, an amount at least equal to the amount 5 apportioned or paid by the Education Department, in support of county model schools out of any grant annually voted by the Legislature for that purpose, but such amount shall not exceed the sum of one hundred and fifty dollars in one year, unless the county council should think fit to provide a larger 10 amount of aid.

(2) The Education Department may by regulation, authorize county boards of examiners, to require from teachers in training thereat, a reasonable fee for their instruction.

12. No teacher shall substitute for any authorized book in 15 actual use in his school, any other text book on the same subject, unless, and until he shall have obtained the written approval of the public school board or trustees, and the public school inspector, to such change; but every such approval must be sanctioned by the Minister of Education, and no such 20 change shall take place until the first day of January which shall occur after the first day of July previous to which such approval and sanction have been obtained; and in case any teacher or other person shall negligently or improperly substitute any text book in place of any 25 authorized text book in actual use upon the same subject in his school, he shall for each such offence, on conviction thereof before a police magistrate or justice of the peace, as the case may be, be liable to a penalty not exceeding ten dollars, payable to the municipality for public school purposes, together 40 with costs, as the police magistrate or justice may think fit.

13. No public or high school trustee shall enter into any contract, agreement, engagement or promise of any kind, either in his own name, or in the name of another, and either alone or jointly with another, or in which he has any pecuniary interest 45 profit or promised or expected benefit, with the corporation of which he is a member, or have any pecuniary claim upon or receive compensation from such corporation for any work or duty on behalf of such corporation, and every such contract agreement, engagement or promise shall be null and void, and 50 such trustee shall also *ipso facto*, vacate his seat and a majority of the other trustees may declare the same accordingly.

14. The provisions contained in the fourth section of "the High Schools Act," for the establishment of collegiate institutes shall cease to have effect on and after the first day of 53 January next, in respect of any high school which is not then a collegiate institute under the conditions of the said Act.

No. 109.

2nd Session, 4th Legislature, 44 Vic., 1881

BILL.

An Act for further improving the School  
Law.

First Reading, 10th February, 1881.

Mr. CROOKS.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act for further improving the School Law.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The parent or guardian of every child, not less than  
5 seven years nor more than thirteen years of age, is required to cause such child to attend a public school, or any other school in which elementary instruction is given, unless there be some reasonable excuse for non-attendance.
2. Except as hereinafter provided, the time which any such  
10 child is required to attend a public school, is during the whole time in each week for which such school is open for instruction of children, and for the respective periods of *eleven* weeks in each of the two terms of the public school year.
3. Any person who receives into his house a child of any  
15 other person, under the age of thirteen years, and who is resident with him or in his care or employment, shall be deemed thereby to be subject to the same duty with respect to the elementary education of such child during such residence, and shall be liable to be proceeded against as in the case of  
20 a parent, if he should fail to perform his duty of causing such child to be educated to the extent required of a parent; but the duty of the parent under this Act shall not thereby be affected or diminished and shall continue in full force.  
(2) In the case of each such child who is employed in  
25 any manufactory, one half of the whole time required by this Act in each week for instruction, shall be deemed to be sufficient instruction in such case.
4. A child shall not be required to attend a public school  
if such child is under efficient elementary instruction in some  
30 other manner, or if such child has been prevented attending school by sickness or other unavoidable cause, or if there is no public school which such child can attend within two miles, measured according to the nearest road from the residence of such child, if under the age of nine, and within three  
35 miles if over that age.
5. Public school boards and rural school trustees may appoint an officer to ascertain and report to the school board or trustees for their information, any parent or other person who has failed and omitted and is failing and omitting  
40 to perform the duty of providing that each child of his, or in his care or employment, between the ages aforesaid, is attend-

ing some school or otherwise being under efficient elementary instruction, and it shall be the duty of such officer to notify, personally or by letter, or otherwise, such parent or other person of his neglect or violation of duty and the consequences thereof. 5

6. No proceeding against any parent or other person for any neglect or violation on his part of the requirements of this Act shall be taken until after the expiration of fourteen days from the time in which he has been so notified, nor until such parent or other person has had an opportunity of attending a meeting of the school board or a committee thereof, or of the trustees, to state his or her reasons for not complying with such notice; but if such parent or other person should, on being so notified, either fail to appear or to satisfy the school board, or committee, or trustees, that this neglect or violation of duty has arisen from any of the grounds on which he would be excused, it shall be the duty of the public school board or trustees, through their said officer, to make complaint of such neglect or violation of duty to the police magistrate or a justice of the peace, having jurisdiction under the *Act respecting summary convictions before justices of the peace*, and such police magistrate and justice shall possess and exercise all the powers conferred by the two hundred and eleventh section of the Public Schools Act. 10 15 20

7. With respect to proceedings for any offence or penalty under the provisions of this Act, where a child is apparently of the age alleged, for the purposes of such proceeding it shall lie with the defendant to prove that the child is not of such age. 25

8. After the first of January next it shall be the duty of every municipal council to cause the assessor of the municipality in preparing the annual assessment roll thereof, to set down therein, in separate columns, the number of children whose ages are over sixteen and under twenty-one, and between seven and thirteen, in addition to the column for those over five and under sixteen years. 30 35

9. The following sections of the Public Schools Act, are hereby respectively amended, that is to say, the one hundred and forty-fifth in the first line thereof, so as to read, "at the first election, two fit and proper persons, and at every subsequent election, one fit and proper person," and all existing township boards are hereby confirmed and made legal. The seventy-eighth section, is hereby amended in sub-section fourteen, by striking out "thereon," and inserting "upon the formation or alteration of a union school section," and the two hundred and forty-first section by substituting "December" for "January," where it twice appears; and the one hundred and nineteenth section is hereby amended in sub-section fifteen, by adding thereto, "and the Inspector is further authorized and required, upon the written request of the school board or trustees, to give an order on the treasurer or sub-treasurer in that behalf in favour of such board or trustees for any sum of money payable for teachers' salaries, and due to such board or section, excepting the superannuation money payable half yearly by male teachers, which are to be retained by the In- 40 45 50

5 spector, as payments made by such teachers as are in the employ  
of board or trustees;”

(2) Section seven of the Act passed in the forty-third year of  
Her Majesty's reign, respecting Public, Separate and High Schools  
5 is hereby amended in sub-section nine, so that the first para-  
graph thereof, shall read as follows: “The judge of the county  
court in case any complaint respecting the validity or mode of  
conducting the election of any trustee of a public school board  
10 in any municipality within his county, is made to him within  
twenty days after such election, shall receive and investigate  
such complaint, and shall thereupon within a reasonable time  
in a summary manner hear and determine the same;”

(3) Section twenty-six of the last mentioned Act in sub-section  
two thereof, is hereby amended by inserting after the word  
15 “treasurer” in the fifth line the words “or sub-treasurer,” and  
the following shall be added to the said section. “and the clerk  
of any municipality in which any separate school section or part  
of a section is situate, shall, not later than the first day of De-  
cember in each year, make out and transmit to the county  
20 school inspector a statement shewing whether or not any county  
rate for public school purposes has been placed upon the col-  
lector's roll against supporters of separate schools, and if such  
has been rated against supporters of separate schools, giving a  
list of such and the amount so rated against each and the total  
25 amount so rated, and the county inspector shall in such case,  
before distributing the county rate among the public school sec-  
tions, deduct the amount so certified to him by the clerk, and  
shall give to the trustees of the separate school section an order  
upon the county treasurer or sub-treasurer for the amount  
30 thereof. 

10. To remove doubts, it is hereby declared, that in any  
case when under the eighteenth section of *the Assessment Act*  
land is assessed against both the owner and occupant, or owner  
and tenant, then such occupant or tenant shall be deemed and  
35 taken to be the person primarily liable for the payment of  
school rates and for determining whether such rates shall be  
applied to public or separate school purposes, and no agrees  
ment between the owner or tenant as to the payment of taxes  
as between themselves shall be allowed to alter or affect this  
40 provision otherwise, *and* in any case where as between the  
owner and tenant or occupant, the owner is not to pay taxes, if  
by the default of the tenant or occupant to pay the same, the  
owner is compelled to pay any such school rate, he may direct  
the same to be applied to either public or separate school  
45 purposes.

11. It shall be the duty of every county council to provide  
and levy in each year, in aid of each county model school  
established in such county, under the regulations of the Edu-  
cation Department, an amount at least equal to the amount  
50 apportioned or paid by the Education Department, in support  
of county model schools out of any grant annually voted by  
the Legislature for that purpose, but such amount shall not  
exceed the sum of one hundred and fifty dollars in one year,  
unless the county council should think fit to provide a larger  
55 amount of aid.

(2) The Education Department may by regulation, authorize  
county boards of examiners, to require from teachers in training

at the County Model School, a reasonable fee for their instruction.

12. No teacher shall substitute for any authorized book in actual use in his school, any other text book on the same subject, unless, and until he shall have obtained the written approval of the public school board or trustees, and the public school inspector, to such change; but every such approval must be sanctioned by the Minister of Education, and no such change shall take place until the first day of January which shall occur after the first day of July previous to which such approval and sanction have been obtained; and in case any teacher or other person shall negligently or improperly substitute any text book in place of any authorized text book in actual use upon the same subject in his school, he shall for each such offence, on conviction thereof before a police magistrate or justice of the peace, as the case may be, be liable to a penalty not exceeding ten dollars, payable to the municipality for public school purposes, together with costs, as the police magistrate or justice may think fit.

13. No public or high school trustee shall enter into any contract, agreement, engagement or promise of any kind, either in his own name, or in the name of another, and either alone or jointly with another, or in which he has any pecuniary interest profit or promised or expected benefit, with the corporation of which he is a member, or have any pecuniary claim upon or receive compensation from such corporation for any work engagement, employment, or duty on behalf of such corporation, and every such contract, agreement, engagement or promise shall be null and void, and such trustee shall also *ipso facto*, vacate his seat and a majority of the other trustees may declare the same accordingly.

14. Section twenty-six of "the High School Act" is hereby amended by striking out the words, "first meeting to be held after the first day of January" in the fourth and fifth lines thereof, and substituting therefor the words, "last meeting to be held in the month of December."

## BILL.

An Act for further improving the Law.

*Reprinted as amended.*

First Reading, 10th February, 1  
Second " 28th February, 1

Mr. Cr

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act respecting the University and Colleges at  
Toronto.

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows:—

1. The Convocation of the University of Toronto shall consist of the graduates in the several faculties of the University, and each graduate shall be a member of Convocation, and at the meetings thereof thirty members are required to be present to constitute a quorum.
2. The register of graduates shall be kept by the Registrar of the University, and shall be open and accessible to each graduate during office hours.
3. The term of office of the Chairman of Convocation shall be for two years.
4. The election by Convocation of members of the Senate shall be subject to the following further provisions: the nomination of candidates to fill vacancies about to occur in the office of member of the Senate shall be made by a nomination paper, limited as to names by the number of vacancies to be filled, and any member of Convocation is at liberty to send his nomination paper to the Registrar of the University at least four weeks before the closing of the election, which shall take place at noon on the first Wednesday of May in each year, and the Registrar shall send out the form of voting papers to each member of Convocation with the list of names of all nominated candidates two weeks at least before the said day, and the voting for members of the Senate shall be limited to such persons as have been so nominated.
5. The number of Senators to be elected by Convocation shall be eighteen, who shall hold office for three years, and one-third of them shall retire annually, and for the purpose of securing this rotation, the first election under this Act shall take place on the first Wednesday in May next, and at such first election six members shall be elected for three years, three being in place of three of the present members whose term office will then expire, and at the second annual election six members shall be elected, and take the place of the present members whose terms of office would otherwise respectively expire in the years one thousand eight hundred and eighty-two and one thousand eight hundred and eighty-three, and at the third annual election six members shall be elected and take

the place of the present members whose terms of office would otherwise respectively expire in the years one thousand eight hundred and eighty-four and one thousand eight hundred and eighty-five.

6. The number of representatives of the high school masters 5  
on the Senate is increased to two, one of whom shall retire  
annually, and at the first election after this Act two repre-  
sentatives shall be chosen according to the mode provided in  
the twenty-sixth section the Revised Statute respecting the  
University of Toronto, one of whom shall hold office for one 10  
year, and one for two years, and at each subsequent annual  
election one representative shall be chosen to hold office for  
two years in place of the one annually retiring.

7. When under any order of the Lieutenant-Governor in  
Council any part of the endowment of the University of To- 15  
ronto, University College, or Upper Canada College and Royal  
Grammar School, is authorized to be invested on the security  
of freehold lands in this Province, the mortgages or other in-  
struments representing such investments may be made to and  
taken in the name of the Bursar of the University and Colleges 20  
at Toronto in his official character as such, and his successors  
in office, and the said Bursar and his successors shall have and  
possess such powers with respect to taking and holding such  
securities and releasing, discharging or assigning the same under  
his seal of office as Bursar as from time to time may be assigned 25  
to him by any order of the Lieutenant-Governor in Council,  
under and subject to such regulations, terms and conditions  
as may be prescribed in such order;

(2) Each and every mortgage security heretofore taken, and  
in which any part of the property or endowment of the Uni- 30  
versity of Toronto, University College, or Upper Canada College  
and Royal Grammar School, respectively, is invested is hereby  
granted to and vested in the said Bursar and his successors in  
office, under and subject to the provisions of this Act.

An Act respecting the University and Colleges at  
Toronto.

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows:—

1. The Convocation of the University of Toronto shall consist of the graduates in the several faculties of the University, and each graduate shall be a member of Convocation.
2. The register of graduates shall be kept by the Registrar of the University, and shall be open and accessible to *members of Convocation* during office hours.
3. The term of office of the Chairman of Convocation shall be for two years.
4. The election by Convocation of the Chancellor and of members of the Senate shall be subject to the following further provisions: the nomination of candidates to fill any vacancy in the office of Chancellor or vacancies about to occur in the office of member of the Senate upon the expiry of the term thereof shall be made by a nomination paper, limited as to names by the vacancies to be filled, and any member of Convocation is at liberty to send in his nomination paper either severally or jointly with other members, not more than twenty to the Registrar of the University at least four weeks before the closing of the election, which shall take place at noon on the first Wednesday of May in each year, on which day the term of office of members of Senate, elected by Convocation shall be deemed to expire and the Registrar shall send out the form of voting papers to each member of Convocation with the list of names of all candidates nominated by ten members at least, three weeks before the said day, and in the case of the Chancellor before the time appointed by the Senate for his election and the voting for members of the Senate shall be limited to such persons as have been so nominated.
5. In case any vacancy shall occur by the death, resignation or removal from the Province of any member of the Senate elected by Convocation before the expiry of his term of office, the Senate shall thereupon appoint, from amongst the members of Convocation, another member of the Senate for the unexpired period of such term.

6. When under any order of the Lieutenant-Governor in Council any part of the endowment of the University of Toronto, University College, or Upper Canada College and Royal Grammar School, is authorized to be invested on the security of freehold lands in this Province, the mortgages or other instruments representing such investments may be made to and taken in the name of the Bursar of the University and Colleges at Toronto in his official character as such, and his successors in office, and the said Bursar and his successors shall have and possess such powers with respect to taking and holding such securities and releasing, discharging or assigning the same under his seal of office as Bursar as from time to time may be assigned to him by any order of the Lieutenant-Governor in Council, under and subject to such regulations, terms and conditions as may be prescribed in such order;

(2) Each and every mortgage security heretofore taken, and in which any part of the property or endowment of the University of Toronto, University College, or Upper Canada College and Royal Grammar School, respectively, is invested is hereby granted to and vested in the said Bursar and his successors in office, under and subject to the provisions of this Act.

## BILL.

An Act respecting the University and Colleges at Toronto.

*(Reprinted as amended.)*

First Reading, 11th February, 1881.

Second " 21st February, 1881.

Mr. CROOKS.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

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No. 111.]

**BILL.**

[1881.

**An Act to amend the Act respecting the Inspection of Asylums, Hospitals, Common Gaols and Reformatories in this Province.**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The Revised Statute respecting the Inspection of Asylums, Hospitals, Common Gaols, and Reformatories in this Province, chapter two hundred and twenty-four, is hereby amended, by striking out sections twenty-three and twenty-four of the said Act, but the repeal of the said sections shall not affect any existing county which has not received payment thereunder to the extent of the sum therein named.

R. S. O. c.  
224, ss. 23 and  
24, repealed.

No. 111.

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2nd Session, 4th Legislature, 44 Vic, 1881.

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BILL.

An Act to amend the Act respecting the Inspection of Asylums, Hospitals, Common Gaols and Reformatories in this Province.

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First Reading, 11th February, 1881.

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Mr. WOOD.

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TORONTO:

PRINTED BY G. BLACKETT ROBINSON.

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No. 112.]

**BILL.**

[1881.

An Act to amend the Act for the Protection of  
Insectivorous and other Birds beneficial to Agri-  
culture.

**H**ER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows :—

1. Notwithstanding anything contained in the Revised  
5 Statute respecting the Protection of Insectivorous and other  
Birds beneficial to Agriculture, chapter two hundred and one,  
any fruit grower may, during the fruit season, for the purpose  
of protecting his fruit from the attacks of such birds, shoot  
or destroy on his own premises the birds known as the Robin  
10 and Cherry Bird, without being liable to any penalty under  
the said Act.

Power to shoot  
Robin and  
Cherry Bird  
for protection  
of fruit.

BILL.

An Act to amend the Act for the Protection  
of Insectivorous and other Birds beneficial  
to Agriculture.

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First Reading, 11th February, 1881.

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Mr. WOOD.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act respecting returns required from Incorporated Companies.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. No action brought against any incorporated company which is required, or whose directors or officers are required to make a return to the Government of Ontario, or to any officer or department thereof, or brought against any director or officer of such company, either under the provisions of the "Ontario Joint Stock Companies' Letters Patent Act," or under any other act, for not duly making a return in accordance with the requirements of any such Act, or for any default in respect of the mode of dealing with such return, shall be maintained if such action is or was commenced subsequent to the receipt by the proper officer or department of the said Government of the return, for the non-making of which, or with reference to which such action is brought, or subsequent to the receipt by such officer or department of a return for a later year: Provided the return made is, except in respect of the time at which the same is made, in substantial compliance with the requirements of the Act under which it is or was made as aforesaid, and is duly verified in accordance with the provisions of such Act, unless such action is brought by the Crown, or by the Attorney-General of Ontario suing on behalf of the Crown. (*Vide* 43 Vic., cap. 21, sec. 2.)
2. The entire amount of the penalty or penalties to be recovered against any company, or the directors or officers thereof, in respect of any default or defaults in complying with any of the requirements of the forty-ninth section of the said Ontario Joint Stock Companies' Letters Patent Act, or in complying with the requirements, in respect of the making of returns, of any other Act up to the time at which such action is brought shall not in the whole exceed one thousand dollars, and in case several actions are brought, either against the company or against its directors or officers, the court or a judge thereof may give such directions as may appear just, either for consolidating such actions or staying the later action or actions, or any of the said actions, upon such terms as may be deemed fitting, and so much of any Act as authorizes the recovery of any greater penalty is hereby repealed. (*Vide* 43 Vic., cap. 21, sec. 4.)
3. The forty-ninth section of the said Revised Statute shall not be held to apply or to have applied to any company until

No action for default in making return to be brought after receipt of return by proper officer.

Limitation of amount of penalty.

When R. S.O., c. 150, s. 49, not to apply.

the first day of February next after the first thirty-first day of December, after such company has been organized, or has gone into actual operation, whichever shall first happen, and shall not be held to apply to any company which has ceased to carry on business; and upon its being proved that any company to which this Act applies did not transact any business (other than the payment of taxes or the making of a return) during the year for which it is alleged a return in accordance with the requirements of law has not been made such company shall be deemed to have ceased to carry on business within the meaning of this section. (*Vide* 43 Vic., cap. 21 sec. 3)

"Return" meaning of.

4. The word "Return" where used in this Act shall include any list, statement or other information required to be furnished to the Government of Ontario, or to any officer or department thereof, by any incorporated company.

2nd Session, 4th Legislature, 44 Vic., 1881.

No. 113.

BILL.

An Act respecting returns required from Incorporated Companies.

(Reprinted with amendments proposed to be moved in Committee.)

First Reading, 11th February, 1881.

THE ATTORNEY-GENERAL.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to amend the Act respecting the sale and management of Timber on Public Lands.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Ontario, enact as follows :—

1. Section six of chapter twenty-six of the Revised Statutes of Ontario, is hereby repealed, and the following enacted in lieu thereof ;

R.S.O., c.26, s. 6, repealed, and new section substituted.

6. In case the council of any township organized as a separate municipality, or the council of any united townships, have passed or hereafter pass any by-law for preserving or selling the timber or trees on the Government road allowances within such townships or united townships, and included in any such license, the corporation of such township or united townships shall be entitled to be paid, out of the consolidated revenue fund of this Province, a sum equal to two per centum of the dues received by Her Majesty for or in respect of the timber or saw-logs which, during the existence of such by-law, were cut within the said township or united townships, under the authority of such license; but no corporation shall be entitled to such per centage of the dues received for timber or saw-logs cut during the times or seasons when any timber or trees on any such road allowances were cut or removed, for which cutting or removal such corporation had, before the fifteenth day of February, one thousand eight hundred and seventy-one, obtained a verdict against any such licensee or nominee.

2. Section eight of said Act is hereby repealed, and the following substituted therefor ;

Sec. 8 repealed and new section substituted.

8. All moneys to be paid, as aforesaid, to any municipal corporation shall be expended in the improvement of the highways situate within the township or within the senior or junior township in respect of which such moneys were paid.

3. The per centage to which the junior township or townships of such united townships may be entitled, shall only be in respect of the dues received upon timber or trees which shall be cut after the thirtieth day of April, one thousand eight hundred and eighty-one.

Time from which junior townships entitled to per centage of dues.

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2nd Session, 4th Legislature, 44 Vic., 1881.

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**BILL.**

An Act to amend the Act respecting the sale and management of Timberon Public Lands.

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First Reading, 14th February, 1881.

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Mr. PARDEE.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Assessment Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section one hundred and seventy-three of chapter one hundred and eighty of the Revised Statutes of Ontario is hereby repealed, and the following substituted therefor:—

R. S. O., c. 180, s. 173, repealed, and new section substituted.

173. In cases where a new municipality is formed partly from two or more municipalities situate in different counties, the collection of non-resident taxes due at the time of formation shall be made by the treasurer of the county in which the new municipality is situate; and for the purpose of enabling him to make such collection, the treasurers of the other counties formerly having jurisdiction over the respective portions of territory forming the new municipality, shall immediately upon the formation thereof, make out lists of the non-resident taxes then due in their respective portions, and transmit the same to the treasurer of the county in which the new municipality is situate; and where a new municipality is formed from two or more municipalities situate in any one county, the treasurer shall keep a separate account for such new municipality.

No. 115.

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2nd Session, 4th Legislature, 44 Vic, 1881.

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BILL.

An Act to amend the Assessment Act.

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First Reading, 15th February, 1881.

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Mr. CREIGHTON.

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TORONTO:

PRINTED BY G. BLACKBURN ROBINSON.

An Act to give increased stability to Mutual Fire Insurance Companies.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. When a mutual fire insurance company has been formed under the Act respecting Mutual Fire Insurance Companies, chapter one hundred and sixty-one of the Revised Statutes of Ontario, and has filed in the registry office copies of the resolutions and the subscription books, and the names of the directors, under the provisions of section seven of the said Act, and before they shall transact or be entitled to transact any insurance business, the chairman and secretary shall also transmit or deliver like copies duly certified to by them to the Inspector of Insurance, at his office in Toronto, accompanied by a statement signed by such chairman and secretary, stating the kind and character of the risks intended to be taken by the company, that is to say, whether the business to be transacted is the insurance of farm and isolated buildings and property, or of commercial, manufacturing and other hazardous and extra hazardous properties.

Copies of resolutions, subscription books, and statements of proposed business to be transmitted to Insurance Inspector.

2. Upon receipt of such certified copies and of the aforesaid statement by the Inspector, he shall proceed to ascertain whether the proceedings for the incorporation of such company have been taken in accordance with the law in that behalf, and whether the subscriptions are bona fide, and by persons possessing property to insure, and whether the proposed name is the same as that of any existing company, or may be easily confounded therewith, and he may require the declaration of any person or persons upon oath to be filed with him, touching any matters concerning which he is called upon to make enquiry.

Enquiries to be made by Inspector after receiving statement.

3. If upon such examination the Inspector shall find that the provisions of the Act have been complied with, and that the said subscriptions have been made in good faith by persons entitled to make the same, and that the proposed name of the company is satisfactory, he shall so certify to the Treasurer of the Province; upon the Inspector reporting to the Treasurer the facts aforesaid, the Treasurer may thereupon issue his certificate, in duplicate, under his hand and seal to the said company, setting forth that it has been made to appear to him that they have become a body corporate and politic under the said Act respecting Mutual Fire Insurance Companies, by the name of the ..... Mutual Fire Insurance

On receipt of certificate from Inspector, Provincial Treasurer to certify that company entitled to transact business.

Company of ....., and that they have complied with the requirements of the law in that behalf, and that they will from and after the filing of one of the duplicate copies of such certificate in the office of the registrar of the county or other registration division within which the municipality in which such company has been established is situate, be entitled to receive applications and to issue policies of insurance, and to transact all the business which a mutual fire insurance company formed under the aforesaid Act may lawfully do in respect of that kind or character of business mentioned in their statement to the Inspector.

Inspector to keep papers on file.

4. The Inspector shall keep on file the said papers so furnished to him, and shall keep a book in which shall be entered the name of the company, the statement delivered by the company as to the character of the business to be transacted by the company, and a copy of the Treasurer's certificate.

Fee to Treasurer on delivery of certificate.

5. There shall be paid to the Treasurer upon the delivery of any such certificate to the said company, the sum of twenty dollars.

Company may do business only of kind stated in certificate.

6. Subject to the provisions of the one hundred and sixtieth chapter of the Revised Statutes of Ontario, any such company may, after receiving the aforesaid certificate and filing the same with the registrar as aforesaid, do and transact any business of a mutual fire insurance company of the kind and character mentioned in the certificate of the Treasurer, but of no other kind; nevertheless, any such company may at any time thereafter apply to the Treasurer for a supplementary certificate to enable the company to extend their business to other classes of risks than those included in their certificate, and the same may, upon the report of the Inspector of Insurance, be granted by the Treasurer. When any supplementary certificate is granted it shall be recorded in the books of the Inspector of Insurance, and filed in the registry office in which the certificate has been filed.

#### GUARANTEE CAPITAL.

Power to raise a guarantee capital.

7. Any mutual insurance company formed under this Act or any former Act, may raise by subscription of its members, or some of them, or by the admission of new members not being persons insured in the company, or by loan or otherwise, a guarantee capital of any sum not less than twenty thousand dollars nor exceeding five hundred thousand dollars, which guarantee capital shall belong to such company and be liable for all the losses, debts and expenses of the company, and subscribers of such capital shall, in respect thereof, have such rights as the directors of the company declare and fix by a by-law to be passed before such capital is subscribed, and unless such capital is paid off or discharged, such by-law shall not be repealed or altered without the consent of the majority of votes of the shareholders or subscribers of such capital stock, either personally or by proxy, at a meeting held for that purpose of the holders of such capital, each shareholder or subscriber being entitled to a vote for every share of fifty dollars held by him.

8. Such capital shall be subscribed by not less than ten persons, and no one person shall subscribe or hold or receive dividends, interest or commissions, upon more than twenty per centum of such guaranteed capital of said stock; the original list of the subscribers to such guarantee capital shall be transferred to and be deposited with the Treasurer of this Province, and shall be held as security for the payment of all losses and other policy liabilities of such companies.

Limitations as to guarantee capital.

9. Said guarantee capital, or any part of the same, shall not be withdrawn until the premium notes held by such company for insurance actually in force, shall amount to three per centum of the amount of property covered by policies in the company; whenever the premium notes held by such company shall have reached the above amount, the president and secretary, or the directors of the company, may file a certificate, under oath, with the Inspector of Insurance, stating that the company holds premium notes of the amount and kind aforesaid, and publish a copy of said certificate, once a week or oftener, for at least four weeks, in some newspaper having general circulation and published in the county or city where such company has its principal office, and also in the *Ontario Gazette* for a like period.

Guarantee capital not to be withdrawn until premium notes amount to 3 per cent. of amount at risk.

10. When the company shall have filed such certificate, and also proof of such publication, with the Inspector, the latter shall make or cause an examination to be made, and if he shall find that the company has the above amount of premium notes of the kind and character aforesaid, and is in a sound and solvent condition, he shall report the same to the Treasurer who may give such company a certificate discharging said fund from all its obligations and liabilities; upon which said fund shall be surrendered to the parties depositing or entitled to receive the same, and they may be discharged from their obligations as such guarantors as aforesaid.

On report of Inspector, Treasurer may give certificate discharging guarantee capital.

### SHARE OR STOCK CAPITAL.

11. Any mutual fire insurance company, incorporated under this or any former Act, may raise a share or stock capital of not less than one hundred thousand dollars, and may increase the same from time to time to a sum not exceeding five hundred thousand dollars.

Power to raise share capital.

12. Every subscriber shall, on allotment of one or more shares to him, become a member of the said company, with all incidental rights, privileges and liabilities.

Subscribers to become members of company.

13. The said shares shall be personal estate, and shall be transferable, but no transfer shall be valid unless made on the books of the said company; and, until fully paid up, no share shall be transferable without the consent of the board of directors, nor shall any transfer be valid while any call previously made remains unpaid; and the company shall have a lien on the shares of any shareholder for unpaid calls or other debts due by him to the company, and for any obligation held by the company against him, and after such call, debt or obligation becomes due, the company may, upon one month's notice to the

Transfer of shares.

shareholder, his executors, or administrators, sell such shares or a sufficient portion thereof to pay such call, debt or obligation, and transfer the shares so sold to the purchaser.

Forfeiture of shares.

14. The company may, also, after default made in the payment of any call upon any share for one month, and after notice having been first given as in the next preceding section mentioned, declare such share and all sums previously paid thereon, forfeited to the company, and the company may sell or reissue forfeited shares on such terms as they shall think fit for the benefit of the company.

When company may make insurances for premiums payable wholly in cash.

15. After the sum of one hundred thousand dollars of the said stock or share capital has been *bona fide* subscribed, and twenty per centum paid thereon into the funds of the said company, the said company may make insurances for premiums payable wholly in cash; but no insurance on the wholly cash principle shall make the insured a member of the company, or make him liable to contribute or pay any sum to the company, or to its funds, or to any other member thereof, beyond the cash premium agreed upon, or give him any right to any participation in the profits or surplus funds of the company, but the company shall not transact any such business on the wholly cash principle without first procuring a license from the Provincial Treasurer, and for this purpose the provisions of the Ontario Insurance Act, except section nine, shall apply to the company, except in so far as anything contained therein may be inconsistent with this Act.

Dividends.

16. The net annual profits and gains of the said company, not including therein any premium notes or undertakings, shall be applied, in the first place, to pay a dividend on the said share capital, not exceeding the rate of ten per centum per annum, and the surplus, if any, shall be applied in the manner provided by the by-laws of the company.

Qualification of directors.

17. After the share capital has been subscribed as aforesaid, at least two-thirds of the persons to be elected directors of the company, in addition to the qualifications required by the fourteenth section of the Act respecting Mutual Fire Insurance Companies, shall be holders of shares of the said capital stock to the amount of three thousand dollars, on which all calls have been fully paid; the other one-third of the directors to be elected shall possess at least the qualifications required by the said fourteenth section of the Act respecting Mutual Fire Insurance Companies.

By-laws.

18. The board of directors of any company which shall raise a share or stock capital under this Act, may make such by-laws, subject to the provisions of this Act and not inconsistent with or contrary to law, as may be necessary to carry out the objects and intentions of this Act, and to give effect to the provisions thereof; and may rescind, alter, vary, or add to the same from time to time.

How a mutual company may become a stock company.

19. Any mutual insurance company heretofore incorporated or organized under any of the laws of this Province, having surplus assets, aside from premium notes or undertakings, sufficient to reinsure all its outstanding risks, after having

given notice once a week for four weeks, of their intention, and of the meeting hereinafter provided for, in the *Ontario Gazette* and in a newspaper published in the county where such company is located, may, with the consent of two-thirds of the  
 5 members present at any regular annual meeting, and of two-thirds of the subscribers of guarantee capital or share or stock capital, or at any special meeting duly called for the purpose, or with the consent, in writing, of two-thirds of the members  
 10 of such company, and the consent, also, of three-fourths of the directors, and of two-thirds of the subscribers to the guarantee capital and share or stock capital, notwithstanding anything contained in the third and fifty-first sections  
 15 of the one hundred and fiftieth chapter of the Revised Statutes of Ontario, become a joint stock company, under the said one hundred and fiftieth chapter of the Revised Statutes  
 20 of Ontario, by conforming to and otherwise proceeding in accordance with the provisions of the said last mentioned Act; and every member of such company, on the day of said annual or special meeting, or the date of said written  
 25 consent, shall be entitled to priority in subscribing to the capital stock of said company, for one month after the opening of the books of subscription to such capital stock, in proportion to the amount of insurance held by such members on unexpired risks in force on the day of said annual or special meeting, or the date of said written consent; and every company so  
 changed or organized shall come under and be subject to the provisions of the said last mentioned Act.

20. Any company which may be formed under the provisions of the last preceding section shall be answerable for all  
 30 the liabilities of the company from which it has been formed, and may be sued therefor by or under its new corporate name, and the assets, real and personal, of the old company shall pass to and become vested in the new company.

New company to be answerable for liabilities of former company.

21. Any insurance company or association formed under  
 35 this Act or any former Act shall keep such a classification of its risks and such registers and books of account as may from time to time be directed or authorized by the Lieutenant-Governor in Council; and if it appears at any time to the  
 40 Inspector that such books are not kept in such a business-like way as to make at any time a proper showing of the affairs and standing of the company, he shall report the same to the Treasurer of the Province, who shall thereupon nominate a competent accountant to proceed, under the directions of the  
 45 Inspector, to audit such books and give such instructions as will enable the officers of such company to keep them correctly thereafter, the expenses of such accountant to be borne by the company to which he is sent, and shall not exceed five dollars per day and necessary travelling expenses.

Company to keep such books as may be directed by Lieutenant-Governor in Council.

22. Section forty-six of the Act respecting Mutual Fire  
 50 Insurance Companies is amended by adding thereto the following words: "but not more than fifty per centum of any premium or premium note shall be paid in cash at the time of such application or of effecting the insurance."

R. S. O., c. 161, s. 46, amended.

23. Any officer, agent, employee, or other person, who shall  
 55 hereafter solicit risks, issue policies or renewals, or effect con-

Penalty for violation this Act.

tracts of insurance in contravention of the terms of this Act, shall be liable to the penalties provided for by section nineteen of the one hundred and sixtieth chapter of the Revised Statutes of Ontario, and such penalties may be recovered, imposed and enforced in the manner provided for by said section. 5

This Act to be read as part of R. S. O., c. 161.

Short title.

24. This Act shall be read and construed with and as part of the Act respecting Mutual Fire Insurance Companies.

25. This Act may be cited as "The Mutual Fire Insurance Companies' Act, 1881."

No. 116.

2nd Session, 4th Legislature, 44 Vic., 1881.

BILL.

An Act to give increased stability to Mutual Fire Insurance Companies.

First Reading, 17th February, 1881.

Mr. HARDY.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

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No. 117.]

BILL.

[1881.

An Act to amend the Municipal Act.

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows:—

1. Section twenty-four of chapter thirty-one of the Acts <sup>42 Vic., c. 31,</sup>  
5 passed in the forty-second year of Her Majesty's reign is hereby <sup>s. 21, repealed.</sup>  
repealed, and the provisions of the Municipal Act, chapter one  
hundred and seventy-four, of the Revised Statutes affected by  
the said enactment shall be and remain as if the said section  
had never been passed.
- 10 2. Section forty-five of the Assessment Act, chapter one <sup>R. S. O., c.</sup>  
hundred and eighty of the Revised Statutes, as amended by <sup>180, s. 45 (48</sup>  
section twenty of chapter twenty-seven of the Acts passed in <sup>V., c. 27, s. 20),</sup>  
the forty-third year of Her Majesty's reign, is amended by  
inserting the word "townships," after the word "towns," in  
15 the first line of the said section.

BILL.

An Act to amend the Municipal Act.

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First Reading, 17th February, 1881.

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Mr. BISHOP.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to amend the law respecting the Registration  
of Births, Marriages and Deaths.

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows:—

1. Section twelve of the Assessment Act (chapter one hun- R. S. O., c. 180,  
5 dred and eighty, Revised Statutes of Ontario,) is hereby amended s. 12, amended.  
as follows, viz.: There shall be added to the assessment roll for  
every township three additional columns immediately after  
column twenty-six, to be headed respectively, "Birth," "Death,"  
"Registered," and to be numbered twenty-seven, twenty-eight  
10 and twenty-nine, and it shall be the duty of the assessor or assess-  
ors when making the annual assessment to inquire of each resi-  
dent taxable party whether there has been a birth or death in the  
family within the previous twelve months, and if either, whether  
the same has been registered or not; if it has not been registered  
15 the assessor shall put the figure 1 opposite the name in the  
column headed "Birth" or "Death," as the case may be; if reg-  
istered, the letter "R" in the column (twenty-nine) set apart  
for "Registered." If any assessor refuses or neglects to comply  
with the requirements of this section, upon conviction thereof  
20 before any court of competent jurisdiction, he shall be subject  
to the penalty imposed by section one hundred and eighty-nine  
of the Assessment Act. This section shall take effect from and  
after the first day of January next.

2. When the birth of any child has been registered, and the  
25 name, if any, by which it was registered, has been altered, or if it  
was registered without a name, when a name is given to it, the  
parent or guardian of such child or other person procuring such  
name to be altered or given, may, within two years next after  
the registration of the birth, deliver to the Registrar-  
30 General a certificate signed by the minister or person who per-  
formed the rite of baptism upon which the name was given or  
altered, or if the child is not baptized, signed by the father,  
mother or guardian of the child, or other person procuring the  
name of the child to be given or altered, and the Registrar-  
35 General shall upon the receipt of such certificate make the  
necessary alteration in the margin of the schedule containing  
the original entry without any alteration in such entry.

3. Section ten of the said Act, chapter thirty-six of the R. S. O., c. 36,  
Revised Statutes, is hereby amended by striking out the word s. 10, amended.  
40 "one" in the fourth line thereof, and substituting therefor the  
word "two."

Provision for registration of birth after expiration of two years.

4. After the expiration of two years next after the birth of any child, that birth shall not be registered except with the written authority of the Registrar-General, and the fact of such authority having been given shall be entered in the column set apart for remarks in schedule A.

5

Provision for registration of death after expiration of two years.

5. After the expiration of two years next after any death, or after the finding of any dead body elsewhere than in a house, that death shall not be registered except with the written authority of the Registrar-General, and the fact of such authority being given shall be entered in the column set apart for remarks in schedule C.

10

R. S. O., c. 36, s. 24, amended.

6. Section twenty-four of the said Act is hereby amended by adding the words "and such prosecution shall be commenced within two years after the time allowed for reporting such birth, marriage or death."

15

Superintendent, &c., of cemetery to notify division registrar in certain cases.

7. Every superintendent or caretaker of any cemetery or burial ground, whether public or private, permitting any dead body to be interred in the grounds over which he has charge, unless he receives a certificate under the hand of the division registrar of the division in which the death took place, that the particulars of such death have been duly registered, shall give to such division registrar within seven days after the burial a written notice under his hand, stating according to his knowledge, information and belief, the name and residence of the deceased and the date and place at which the death and burial took place. Any superintendent or caretaker neglecting or refusing to comply with this section, shall for each and every offence be liable to the penalties provided by the twenty-fourth section of the said Act respecting Births, Marriages and Deaths, and the procedure for the recovery thereof shall be the same as is by said Act provided. This Act shall be read with and as part of the Act respecting Births, Marriages and Deaths, and shall take effect from and after the passing thereof.

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Penalty for neglect.

BILL.

An Act to amend the law respecting Registration of Births, Marriages and Deaths.

First Reading, 18th February, 1

Mr. HA

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act for the incorporation by Letters Patent and the regulation of Timber Slide Companies.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as “The Timber Slide Companies Act of 1881.” Short title.

2. In case the Lieutenant-Governor in Council thinks fit, he may confer upon any company which has heretofore been, or shall be hereafter incorporated, under the Ontario Joint Stock Companies Letters Patent Act, for the purpose of acquiring or constructing and maintaining any dam, slide, pier, boom, or other work, necessary to facilitate the transmission of timber down any river or stream in this Province, or for the purpose of blasting rocks or dredging, or removing shoals or other impediments, or of otherwise improving the navigation of any such river or stream for the said purpose, the powers authorized by the Revised Statute respecting Joint Stock Companies, for the construction of works to facilitate the transmission of Timber down Rivers and Streams, being chapter one hundred and fifty-three of the Revised Statutes. Certain powers may be granted to timber slide companies.

3. Every such company shall thereupon become subject to all the provisions of the said Revised Statute as amended by this Act, and to the provisions of this Act. R.S.O., c. 153, and this Act to apply to company.

4. The letters patent conferring the powers authorized by this Act shall not be issued to any company until proof has been furnished that one-half of the proposed capital has been subscribed in good faith, and that at least ten per centum thereof (or five per centum of the whole capital) has been paid in to the credit of trustees for the company, and remains at their credit in some one or more of the chartered banks of this Province. When letters patent may be issued.

(Vide R. S. O., c. 153, s. 5.)

5. The applicants for a charter shall, with their application, transmit to the Provincial Secretary a report to be laid before the Commissioner of Public Works, in case the Provincial Secretary or other officer charged by the Lieutenant-Governor in Council with the duty of reporting thereon shall deem that the other requirements preliminary to the issue of the charter have been duly complied with, and shall also cause a copy of such report to be laid before the municipal council of the county in which such works are proposed to be situated; or if the works are situate in more than one county, then be- Report to be transmitted to Provincial Secretary by applicants.

fore the municipal councils of the counties in or on the boundaries of which such works are proposed to be situated; or if such proposed works are in unsurveyed lands not contained within the bounds of any incorporated county, then before the Commissioner of Public Works alone. (*Vide* R. S. O., c. 153, s. 8.) 5

- Rate of dividend may be stated in Letters Patent 6. The Lieutenant Governor may, in the Letters Patent, state a rate of dividend, not exceeding fifteen per centum, which the directors shall be at liberty to pay to the shareholders, if the revenues of the Company otherwise justify such payment, and in such case the Commissioner of Public Works, shall, in considering the tolls to be allowed, have regard to such rate, but no such rate shall be so fixed for a longer period than ten years. 10
- Limitation of company's existence. 7. The existence of any company incorporated under this Act may be limited to such a term of years as is fixed by the Letters Patent. 15
- Particulars of notice in Gazette. 8. The notice of application in the *Gazette* need not state the objects of the company with the same detail as is required in the report, but shall give such a description thereof as will reasonably inform the public of the works to be undertaken. 20
- Contents of report. 9. The report shall contain—  
 (1) A detailed description of the works to be undertaken, and an estimate of their cost;  
 (2) An estimate from the best available sources of the quantity of different kinds of timber expected to come down the river or stream yearly after the works have been completed; and 25  
 (3) A schedule of the tolls proposed to be collected. (*Vide* R. S. O., c. 153, s. 9.)
- Report to be considered by Commissioner of Public Works. 10. Thirty days after the said report has been laid before the municipal council, or councils, as the case may be, the Commissioner of Public Works shall consider the said report, and in case he approves of the proposed works, he shall report such approval to the Lieutenant-Governor who may thereupon direct the issue of a charter. (*Vide* R. S. O., c. 153, s. 10.) 35
- By-laws to regulate transmission of timber. 11. Every such company may make by-laws, and from time to time alter and amend the same, for the purpose of regulating the safe and orderly transmission of timber over or through the works of the company, and the navigation therewith connected. (R. S. O., c. 153, s. 12.) 40
- Copies of proposed by-laws to be annexed to reports of company. 12. Copies of the proposed by-laws shall be annexed to the reports required to be made by the company by the fifth section of this Act, and such proposed by-laws with such variations as are made therein by the Commissioner of Public Works at any time before the issue of the Letters Patent, shall, upon the issue of such Letters Patent, become the by-laws of the company without further action or adoption by the company, and copies of all new by-laws, and of all amended by-laws, with reference to the said subjects, shall be annexed to the annual reports required by the twenty-seventh section of the said Revised Statute. (*Vide* R. S. O., c. 153, s. 13.) 45

13. No such new by-law, or amended by-law, shall have any force until one month after it has been included in such report; but if at the end of one month such by-law has not been dis-  
 5 it shall have full force and be binding upon the company, and upon all persons using the works, unless the Commissioner in the meantime shall have under his hand enlarged the time for considering the same. (*Vide* R. S. O., c. 153, s. 14.)

When by-law to come in force.

14. No such by-law shall impose any penalties, or shall  
 10 contain anything contrary to the true meaning and intention of the said Revised Statute, chapter one hundred and fifty-three, or this Act. (R. S. O., c. 153, s. 15.)

Restrictions as to by-laws.

15. No such company shall construct any such works over or upon or otherwise interfere with or injure any private pro-  
 15 perty, or the property of the Crown, without first having obtained the consent of the owner, or occupier thereof, or of the Crown, except as hereinafter provided. (R. S. O., c. 153, s. 3.)

Company not to interfere with property without leave.

16. No such company shall be formed under the provisions of this Act to improve any river or stream, for the improve-  
 20 ment of which any other company has been formed either under this Act, or any other Act of the Legislature, or upon which there is constructed any provincial work, without the consent of such other company or of the Lieutenant-Governor in Council respectively, which consent shall be formally expressed  
 25 in writing, and shall be filed in the office of the Provincial Secretary. (*Vide* R. S. O., c. 153, s. 4.)

Consent of other companies to formation of company, when required.

17. In all cases where a shareholder has not paid ten per centum on the share or shares held by him, but some other party pays the same on his behalf, the party so paying may  
 30 recover the amount as a debt, in any competent court, although not previously authorized to pay the money on behalf of such shareholder. (*Vide* R. S. O., c. 153, s. 7.)

Recovery of payments made for stockholders.

18. Upon the expiration of the period limited for the ex-  
 35 istence of the company, if any such period is limited by the Letters Patent, all the dams, slides, piers, booms and other works constructed by the company, for the transmission of timber down any river or stream, or for the improvement of the navigation of such river or stream, shall become the property of Her Majesty for the public uses of the Province,  
 40 and the said company, or the shareholders thereof, shall have no right to receive any compensation therefor.

On expiration of Company's existence, property to vest in Her Majesty.

19. Notwithstanding the expiration of the said period, the said company shall continue to exist for the purpose of taking  
 45 such proceedings as may be requisite for getting in its assets, winding up and settling its affairs, and distributing amongst its shareholders the capital stock or accumulated sinking fund of the said company, and the said company may, for the purposes aforesaid, sue and be sued as if the period of its corporate existence had not expired; but after such period the  
 50 words "in liquidation" shall be added to the name of the company, and shall be a part of such name.

Company's existence to continue for the purpose of winding up.

Distribution  
of capital and  
profits.

**20.** No distribution of capital shall be made under the next preceding section until three years after the expiration of the said period limited as aforesaid for the existence of the said company, but this shall not prevent the distribution amongst the shareholders of the annual profits received from investments, and after the said period the fifty-seventh section of the said Joint Stock Companies' Letters Patent Act shall not apply to the company. 5

R.S.O., c. 153,  
s. 57, amended

**21.** The fifty-seventh section of the said Revised Statute, chapter one hundred and fifty-three, is hereby amended by inserting after the word "works," in the eleventh line thereof, the following words:—"and running, driving, booming, towing, sorting, and rafting logs and other timber, and providing an equal annual sinking fund, which, invested at six per centum, shall be sufficient to pay back to the shareholders the amount of their paid-up stock at the end of the time limited for the existence of the company," and by substituting "fifteen dollars" for "ten dollars" where these words occur in the thirteenth, seventeenth, and nineteenth lines of the said section. 10 15

Sec. 72,  
amended.

**22.** The seventy-second section of the said Revised Statute is hereby amended by inserting after the words "undertaken by them" the following words:—"and mentioned in the report required prior to the incorporation of the company;" and by inserting after the word "situate," in the ninth line thereof, the following words:—"or by the Commissioner of Public Works." 20 25

Sec. 73,  
amended.

**23.** The seventy-third section of the said Revised Statute is hereby amended by inserting after the word "damage," in the thirteenth line thereof, the following words:—"incurred after the time limited for the existence of the company has expired, or." 30

Sec. 75,  
amended.

**24.** The seventy-fifth section of the said Revised Statute is amended by adding at the end thereof the following words:—"and in settling the amount to be paid to the company for such works, the amount of the sinking fund accumulated at the time of such valuation towards the payment of the capital stock shall be deducted therefrom." 35

Letters patent  
may limit  
term of exist-  
ence of certain  
companies.

**25.** Where a company heretofore incorporated under the said Revised Statute, chapter one hundred and fifty-three, or under the Consolidated Statute of Canada, chapter sixty-eight, applies for the issue of letters patent under section sixty-five or section sixty-six of the Ontario Joint Stock Companies' Letters Patent Act, the Lieutenant-Governor may, by the letters patent, confer upon the said company any of the powers authorized by this Act, and may by such letters patent limit the term of existence of the said company, and every such company obtaining letters patent as aforesaid, shall be subject to the provisions of the said Revised Statute, chapter one hundred and fifty-three, as amended by this Act, and to the provisions of this Act. 40 45 50

Existence of  
company may  
be extended by  
supplemen-  
tary letters  
patent.

**26.** The Lieutenant-Governor may by Supplementary Letters Patent extend the term of existence of any company incorporated for a limited period under this Act, for such a number



BILL.

An Act for the incorporation by Letters  
Patent, and the regulation of Timber  
Slide Companies.

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First Reading, 18th February, 1861.

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THE ATTORNEY-GENERAL.

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TORONTO :  
PRINTED BY C. BLACKETT ROBINSON.

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An Act to further provide for the Release of Dower of Married Women in certain cases.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- 1. Where the wife of an owner of land has been living  
 5 apart from him for two years under such circumstances as by  
 law disentitle her to alimony, and such owner is desirous of  
 mortgaging the land free from dower, he may apply to a  
 judge of one of the superior courts, and, if the judge ap-  
 proves, he may, by order to be made by him in a summary  
 10 way, upon such evidence as to the Judge seems meet, and  
 either *ex parte* or upon notice (to be served personally unless  
 the Judge otherwise directs), dispense with the concurrence  
 of the wife for the purpose of barring her dower, and he shall  
 (unless the wife has been so living apart from her husband  
 15 under such circumstances as disentitle her to dower) ascertain  
 and state in the order the value of such dower, and order such  
 amount to remain a charge upon the property, or to be secured  
 otherwise for the wife's benefit, or to be paid and applied for  
 her benefit as he deems best; and thereupon a conveyance by  
 20 way of mortgage by the husband, expressed to be free from  
 his wife's dower, shall, subject to any terms mentioned in the  
 order, be sufficient to bar her right thereto, as if she had duly  
 executed a deed jointly with her husband for that purpose.  
 (*Vide* R. S. O., c. 126, s. 10, as amended by 41 Vic., c. 8, s. 13.)
- 25 2. In case the gaol surgeon of any county or district in  
 which a married woman resides, and another medical prac-  
 titioner to be named by the judge, shall each certify (Form A)  
 that he has personally examined such married woman and that  
 he is of opinion that she is insane, and the judge of the county  
 30 court of the county in which such married woman resides,  
 or a judge of one of the superior courts, also certifies  
 (Form B) that he has personally examined such mar-  
 ried woman, and that from such examination and from the  
 evidence adduced before him, if such judge thinks it expedi-  
 35 ent to hear evidence, he is of opinion that such married woman  
 is insane, the said judge may make the like order as by the  
 eighth section of the Revised Statutes of Ontario, chapter one  
 hundred and twenty-six, is authorized in the case of a married  
 woman of unsound mind who is confined in an asylum for the  
 40 insane. The examination and certificates required by this  
 section must all be made and granted within a period of one  
 calendar month, or such certificates shall not be acted upon by

Application in order to mortgage land free from dower where wife disentitled by misconduct.

Judge's order as to dower where wife is lunatic but not confined in an asylum.

the said judge, and the application shall not be entertained unless it is made within one month of the day upon which the last of such examinations took place.

Further orders by Judge as to other lands.

3. In case a judge makes an order under the next preceding section with reference to any parcel of land, he may, at any time within one year of the time upon which he examined such married woman, but not afterwards, make like orders in respect of other parcels of land which her husband may have agreed to sell or convey by way of mortgage.

R. S. O., c. 127, ss. 6, 7, 8 and 10 to apply to order under this Act.

4. Sections six, seven, eight and ten of "The Married 10 Womens' Real Estate Act," shall apply to any order made under this Act.

FORM A.

CERTIFICATE OF MEDICAL PRACTITIONER.

I, the undersigned *(here set forth the qualification or degree of the person certifying: for example, "Licentiate of the Medical Board," "M.D. of the University of Toronto," etc.)* a legally qualified Medical Practitioner, residing and practising at \_\_\_\_\_ in the County of \_\_\_\_\_ do hereby certify that I, on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18\_\_\_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_ separately from any other Medical Practitioner, personally examined A. B. of the Township of \_\_\_\_\_ in the County of \_\_\_\_\_ wife of C. D., of the Township of \_\_\_\_\_ in the County of \_\_\_\_\_ and I further certify that the said \_\_\_\_\_ is insane. and that I have formed this opinion upon the following grounds, namely: *(here state the facts upon which the Certificate is based),*  
Signed this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_

FORM B.

CERTIFICATE OF JUDGE.

Province of Ontario. } I, the undersigned, E. F.  
County of \_\_\_\_\_ }  
Judge of the County Court of the County of \_\_\_\_\_ do hereby certify that I on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18\_\_\_\_, personally examined A. B., of the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ wife of C. D. of the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ and I do hereby further certify that from such personal examination (and from the evidence of G. H. and J. K. adduced before me, *if evidence has been taken by the judge*) I am of opinion that the said \_\_\_\_\_ is insane.  
Signed this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18\_\_\_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_



BILL

An Act to further provide for the Release  
of Dower of Married Women in certain  
cases.

First Reading, 18th February, 1881.

The ATTORNEY-GENERAL.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to extend the powers of the Law Society of Upper Canada.

WHEREAS by an Act intituled "An Act respecting the Law Society of Upper Canada," chapter one hundred and thirty-eight of the Revised Statutes of Ontario, the thirty-eighth and forty-first sections thereof provided amongst other things, that the Benchers of the said Law Society might make all necessary rules, regulations and by-laws concerning matters relating to the discipline and honour of the Bar, and to the discipline and practice of attorneys, solicitors, and articted clerks; and whereas doubts have arisen touching the powers conferred upon the said Law Society by the said sections, and it is desirable that such doubts be removed; and whereas it is expedient to define the powers of the said society in reference to the said matters of discipline;

Preamble.

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Whenever any person, being a barrister or attorney-at-law, or a solicitor of the Court of Chancery, or a student-at-law, or attorney's clerk serving under articles, has been or may hereafter be found by the Benchers of the Law Society, after due inquiry by a committee of their number or otherwise, guilty of professional misconduct, or of conduct unbecoming a barrister, attorney, solicitor, student-at-law, or articted clerk, it shall be lawful for the said Benchers in Convocation to disbar any such barrister, and to resolve that any such attorney or solicitor is unworthy to practise as such attorney or solicitor; to expel from the society, and the membership thereof, any such student or articted clerk, and to strike his name from the books of the society; and to refuse either absolutely or for a limited period to admit such articted clerk to the usual examinations, or to grant him the certificate of fitness necessary to enable him to be admitted to practice.

Powers of Benchers to disbar or expel in case of misconduct.

2. Upon any barrister being disbarred as aforesaid, all his rights and privileges as a barrister-at-law shall thenceforth cease and determine, and notice of his being disbarred shall forthwith be given by the secretary of the Law Society to the superior courts of this Province.

Barrister's privileges to cease when he is disbarred.

3. Upon its being resolved by convocation that any attorney or solicitor is unworthy to practise, a copy of the resolution shall forthwith be communicated to the several superior courts, and thereupon without any formal motion an order of the said respective courts may be drawn up, striking such attorney or

Striking off the Rolls.

solicitor off the Rolls: Provided that such attorney or solicitor may at any time afterwards apply to any of the said courts to be restored to practice, as heretofore.

Powers of  
visitors as to  
discipline  
vested in the  
Benches.

4. Any powers which the visitors of the said Law Society may have in the said matters of discipline, are hereby vested in the Benchers of the said Law Society, and the powers by this Act given to the said Benchers may be exercised by them without reference to, or concurrence in, by the said visitors.

2nd Session, 4th Legislature, 44 Vic, 1881.

BILL.

An Act to extend the powers of the Law  
Society of Upper Canada.

First Reading, 18th February, 1881.

The ATTORNEY-GENERAL.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to prevent the spread of the Yellows among  
Peach, Nectarine, and other Trees.

HER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows:—

1. It shall not be lawful for any person to keep any peach,  
5 nectarine, or other trees infected with the contagious disease  
known as the yellows, or to offer for sale or shipment, or to  
sell or ship any of the fruit thereof; and no person shall be  
entitled to any damages or compensation for the destruction of  
such diseased fruit and trees as herein provided; and it shall  
10 be the duty of every person, so soon as he becomes aware of  
the existence of the said disease in any trees or fruit owned  
by him, to burn the same forthwith.
2. When the said disease exists, or there is good reason to  
believe that it exists, or when there is good reason to appre-  
15 hend its introduction, any five or more freeholders residing in  
the same or an adjoining township, may petition the township  
council to appoint an inspector to prevent the spread or intro-  
duction of the said disease.
3. On receipt of such petition, it shall be the duty of the  
20 township clerk to call a meeting of the township council within  
ten days thereafter, for the consideration of the same; and it  
shall be the duty of the said council, if satisfied of the  
truth of the facts stated in the petition, to appoint an inspec-  
tor for the purpose of carrying out the provisions of this  
25 Act.
4. It shall be the duty of the inspector to examine the peach  
and nectarine orchards of the township once between the middle  
and end of July, and once between the middle and end of August  
every year, and he shall keep a correct record of the condition  
30 of each orchard and of the time spent in the performance of his  
duty, which time shall not exceed six days during each period  
of inspection, and shall, after each such inspection, file the said  
record with the clerk of the township.
5. In case written complaint is made to the inspector that  
35 the said disease exists, or that there is good reason to believe  
that it exists, within the township, in any locality described in  
such complaint, with reasonable certainty, or that infected trees  
or fruit are offered for sale or shipment, or have been imported  
into the township by any person named, such inspector shall,  
40 without unnecessary delay, proceed to examine the trees or  
fruit so designated.

No infected  
trees to be  
kept or fruit  
sold.

Petition for  
appointment  
of inspector.

On receipt of  
petition, meet-  
ing of council  
to be called.

Duty of  
inspector.

Duty of  
inspector on  
special com-  
plaint.

Notice to persons owning trees.

6. The inspector, if satisfied that the disease has actually infected any trees or fruit, shall affix a distinguishing mark upon each tree so infected, and upon all other peach or nectarine trees within twenty feet of any such tree, and shall immediately give notice in writing to the owner or occupier of the land whereon the said infected trees are growing, requiring him, within fifteen days from the receipt of said notice, to burn the trees so marked as hereinbefore directed; and in case of fruit so infected, such notice shall require the person in whose possession it is found to immediately destroy the same.

Penalty.

7. In case any owner or occupier refuses or neglects to destroy such diseased trees or fruit after such examination and notification, he shall, upon conviction, be liable to a fine of not less than                      dollars, nor more than                      dollars, for every such offence.

Recovery of penalties.

8. Every offence against the provisions of this Act shall be punished, and the penalty hereby imposed for each offence shall be recovered and levied, on summary conviction, before any justice of the peace; and all fines collected shall be paid into the treasury of the municipality in which the offence is committed.

No. 122.

2nd Session, 4th Legislature, 44 Vic., 1881.

BILL.

An Act to prevent the spread of the Yellows among Peach, Nectarine and other Trees.

First Reading, 18th February, 1881.

MR. HARCOURT.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to prevent the spread of the Yellows among  
Peach, Nectarine, and other Trees.

HER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows:—

1. It shall not be lawful for any person to keep any peach,  
5 nectarine, or other trees infected with the contagious disease  
known as the yellows, or to offer for sale or shipment, or to  
sell or ship any of the fruit thereof; and it shall be the duty  
of every person, so soon as he becomes aware of the existence  
of the said disease in any trees or fruit owned by him, to burn  
10 the same forthwith.

No infected  
trees to be  
kept or fruit  
sold.

2. When the said disease exists, or there is good reason to  
believe that it exists, or when there is good reason to apprehend  
its introduction, any five or more freeholders residing in  
the same or an adjoining *municipality* may petition the council  
15 *thereof* to appoint an inspector to prevent the spread or intro-  
duction of the said disease.

Petition for  
appointment  
of inspector.

3. On receipt of such petition, it shall be the duty of the  
clerk of the *municipality* to call a meeting of the council within  
ten days thereafter, for the consideration of the same; and it  
20 shall be the duty of the said council, if satisfied of the  
truth of the facts stated in the petition, to appoint an inspec-  
tor for the purpose of carrying out the provisions of this  
Act and to provide for his remuneration.

On receipt of  
petition, meet-  
ing of council  
to be called.

4. It shall be the duty of the inspector to examine the peach  
25 and nectarine orchards of the *municipality* once between the  
middle and end of July, and once between the middle and end  
of August every year, and he shall keep a correct record of the  
condition of each orchard and of the time spent in the perform-  
ance of his duty, which time shall not exceed six days during  
30 each period of inspection, and shall, after each such inspection,  
file the said record with the clerk of the *municipality*.

Duty of  
inspector.

5. In case written complaint is made to the inspector that  
the said disease exists, or that there is good reason to believe that  
it exists, within the *municipality* in any locality described in  
35 such complaint, with reasonable certainty, or that infected trees  
or fruit are offered for sale or shipment, or have been imported  
into the *municipality*, by any person named, such inspector shall  
without unnecessary delay, proceed to examine the trees or  
fruit so designated.

Duty of  
inspector on  
special com-  
plaint.

Notice to persons owning trees.

6. The inspector, if satisfied that the disease has actually infected any tree or fruit, shall affix a distinguishing mark upon each tree so infected, and shall immediately give notice in writing to the owner or occupier of the land whereon the said infected trees are growing, requiring him, within *seven* days from the receipt of said notice, to burn the trees so marked as hereinbefore directed; and in case of fruit so infected, such notice shall require the person in whose possession it is found to immediately destroy the same. 5

Penalty.

7. In case any owner or occupier refuses or neglects to destroy such diseased trees or fruit after such examination and notification, he shall, upon conviction, be liable to a fine of not less than *five* dollars, nor more than *twenty* dollars, for every such offence. 10

Recovery of penalties.

8. Every offence against the provisions of this Act shall be punished, and the penalty imposed for each offence shall be recovered and levied, on summary conviction, before any justice of the peace; and all fines collected shall be paid as follows: one-half to the person laying the information or complaint and the residue to the treasurer of the municipality in which the offence is committed for the use of the municipality. 20

## BILL.

An Act to prevent the spread of the Yellows among Peach, Nectarine and other Trees.

(Reprinted as amended.)

First Reading, 18th February, 1881.  
Second " 2nd March, 1881.

Mr. HARCOURT.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to make further provision respecting the Central Prison, the Andrew Mercer Ontario Reformatory for Females, and the Industrial Refuge for Girls.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. The twelfth, thirteenth and fourteenth sections of the Revised Statute respecting the Central Prison, and the twelfth and thirteenth sections of the Act passed in the forty-second year of Her Majesty's reign intituled "An Act respecting the Andrew Mercer Ontario Reformatory for Females," shall be held to extend to persons convicted of offences created under the authority of an Act of the Legislature of this Province, as well as to persons convicted of offences directly created by the said Legislature, and to any case where imprisonment is imposed in whole or in part, in default of the payment of a fine or penalty in money, notwithstanding the offender is entitled to be discharged upon payment of such fine or penalty; if the fine or penalty is paid after the removal of the offender to the Central Prison or Reformatory, the same shall be paid to the proper officer of the said Prison or Reformatory, to defray the expense of removal, and otherwise for the use of the said Prison or Reformatory; but nothing herein contained shall affect the right of any private person to the said fine, or any part thereof. (*Vide* 42 Vic. c., 43, s. 3, D.)
2. Any sheriff or other person having the custody of an offender convicted of an offence punishable by virtue of a statute of this Province, for which such offender has been sentenced to imprisonment in "The Andrew Mercer Ontario Reformatory for Females" may detain the offender, or cause him or her to be detained, in the common gaol of the county or district in which such offender is sentenced, or other place of confinement in which the said offender may be, until a Provincial bailiff or other person lawfully authorized in that behalf requires the delivery of the said offender for the purpose of being conveyed to the Central Prison or Reformatory aforesaid. (*Vide* 42, Vic., c. 43, s. 4, D.)
3. Where the confinement of any girl in "The Industrial Refuge for Girls" is directed under the Act passed in the forty-second year of Her Majesty's reign, chaptered thirty-nine, the judge or police magistrate may either by his warrant authorize some female to convey the said girl to the Refuge, or he may give such directions as he considers advisable for the

Operation of  
R. S. O., c. 217,  
ss. 12-14, and  
42 Vic., c. 38,  
ss. 12 and 13,  
extended.

Detention of  
offenders until  
removal to  
Central Prison  
or Reforma-  
tory.

Judge or  
magistrate  
may direct  
detention of  
girls in certain  
cases.

detention of the girl in some proper place of confinement until a female Provincial bailiff, or other person lawfully authorized in that behalf, requires the said girl's delivery for the purpose of being conveyed to the Reformatory.

Notice of  
detention to be  
given to super-  
intendent of  
Refuge.  
Fees.

4. In case the said judge or police magistrate directs the girl's detention under the next preceding section, he shall cause the superintendent of the said Refuge to be forthwith notified of his action in the said matter: in case a female is employed by the said judge or police magistrate to convey the girl to the Refuge, she shall be entitled to receive from the county or separate town or city the like fees and charges therefor as a constable would receive for similar services. (*Vide* 42 Vic., c. 39, s. 16.)

BILL.

An Act to make further provision respecting the Central Prison, the Andrew Mercer Ontario Reformatory for Females, and the Industrial Refuge for Girls.

First Reading, 21st February, 1881.

The ATTORNEY-GENERAL.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to extend the powers of Companies created under the Joint Stock Companies' Letters Patent Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Subject to the provisions of the seventeenth, eighteenth and nineteenth sections of "The Ontario Joint Stock Companies' Letters Patent Act," the directors of any company incorporated under the said act, at any time after nine tenths of the capital stock of the company has been taken up, and ten per centum thereon paid in, but not sooner, may if they see fit, make a by-law for increasing the capital stock of the company to any amount which they consider requisite for the due carrying out of the objects of the company;

By-laws to increase capital.

(2) Such by-law shall declare the number and value of the shares of the new stock, and may prescribe the manner in which the same are to be allotted, and in default of its so doing, the control of such allotment shall be held to rest absolutely in the directors.

2. In case a resolution, authorizing an application to the Lieutenant-Governor therefor, is passed by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at a general meeting of the company, duly called for considering the subject of such resolution, the Lieutenant-Governor in Council may from time to time direct the issue of Supplementary Letters Patent to the company, embracing any or all of the following matters:—

Additional powers which may be granted by Supplementary Letters Patent Act.

(1) Extending the powers of the company to any objects, within the scope of the said Act, which the company may desire;

(2) Limiting or increasing the amount which the company may borrow upon debentures or otherwise;

(3) Providing for the formation of a reserve fund;

(4) Varying any provision contained in the Letters Patent, so long as the alteration desired is not contrary to the provisions of the said Act;

(5) Making provision for any other matter or thing in respect of which provision might have been made by the original Letters Patent.

3. The Lieutenant-Governor may by Order in Council to be notified in the *Ontario Gazette* direct in what cases notice of application for Supplementary Letters Patent shall be given in the *Gazette* or otherwise, and the nature of such notice, and he may in any case dispense with notice.

Orders in Council may direct what notice of application to be given.

4. This Act shall be read as part of the said Ontario Joint Stock Companies' Letters Patent Act.

This Act to be read as part of R. S. O., c. 150.

5. The sixteenth section of the said Act is hereby repealed.

R. S. O. c., 150, s. 16, repealed.

BILL.

An Act to extend the powers of Companies  
created under the Joint Stock Companies'  
Letters Patent Act.

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First Reading, 21st February, 1881.

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The ATTORNEY-GENERAL.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to incorporate the Ontario Sault Ste. Marie  
Railway Company.

WHEREAS the construction of a railway to connect the Preamble.  
railways of the Province of Ontario with Sault Ste. Marie,  
with power to build a branch or branches to Lake Nipissing  
and Lake Temiscaming would be of general benefit to the  
5 Province of Ontario; and whereas a petition has been pre-  
sented praying the incorporation of a company for that pur-  
pose, and it is expedient to grant the prayer of such petition;  
Therefore Her Majesty, by and with the advice and consent  
of the Legislative Assembly of the Province of Ontario, enacts  
10 as follows:—

1. James D. Edgar, H. H. Cook, M.P.P., J. M. Ferris, M.P.P., Incorporation.  
George A. Cox, Robert Jaffray, James Holden, William Gooder-  
ham, Jr., The Hon. Frank Smith, and Adam Braun, together  
with all such persons and corporations as shall become share-  
15 holders in the company hereby incorporated, shall be and are  
hereby constituted a body corporate and politic, by and under  
the name of "The Ontario Sault Ste. Marie Railway Company."

2. The said company shall have full power and authority Location of  
to lay out, construct, and complete a double or single iron or line.  
20 steel railway of a gauge of four feet eight and one-half inches  
in width, from a point at or near Gravenhurst, in the dis-  
trict of Muskoka, or at such other point as the Directors  
may determine; thence extending northerly to French river,  
thence extending westerly and northerly, or in such way  
25 as the directors may determine, to Sault Ste. Marie in the dis-  
trict of Algoma, with power to build extensions easterly or  
southerly to connect with the railway system of Ontario in such  
manner as the directors may determine, and with power to build  
the said railway in sections as the directors may determine;  
30 also, with power to build a branch or branches to Lake Nipis-  
sing and Lake Temiscaming, and all the company's powers  
shall be applicable to said branches.

3. Notwithstanding anything contained in the section of Powers as to  
"The Railway Act of Ontario" respecting "lands and their acquiring  
35 valuation," the said company may acquire land and water-lot lands.  
property for the purpose of their undertaking, in the manner  
provided for by the said sections, and may acquire, under the  
provisions in that behalf of the said Act, and hold such width  
of land on the sides of the railway and its branches at any  
40 point as may be needed for the erection of snow-drift fences  
or barriers, at a sufficient distance from the track to prevent the  
obstruction of the line by drifting snow, and the compensation

to be paid to the owners for such lands, as also the power of the company to take possession thereof, shall, in case of difference, be ascertained and exercised in the manner provided by the said sections of the said Railway Act.

**Capital stock.** 4. The capital stock of the company shall be two millions of 5 dollars, with power to increase the same, in the manner provided in "The Railway Act of Ontario," to be divided into shares of one hundred dollars each; and the money so raised shall be applied, in the first place, to the payment of all fees, expenses and disbursements of and incidental to the passing 10 of this Act, and the organization of the said company, and for making the surveys, plans, and estimates connected with the works hereby authorized, and the procuring of any plans and estimates heretofore made, and all the remainder of said moneys shall be applied to the making, equipping, completing and 15 maintaining of the said railway, and to the other purposes of this Act.

**Aid to company.** 5. The said company may receive, either from any government or from any persons or bodies, corporate, municipal or politic, who may have power to make or grant the same, bo- 20 nuses, loans or gifts of money, or securities for money, or grants of land, in aid of the construction, equipment, or maintenance of the said railway, and upon accepting such aid the said company may agree to any conditions as to running powers or traffic arrangements in favour of any other lines which may be imposed 25 by the government granting said aid.

**Provisional directors.** 6. The persons named in the first section of this Act shall be and are hereby constituted provisional directors of the said company, of whom five shall be a quorum, and shall hold office as such until the first election of directors under this Act, and 30 shall have power forthwith to open stock books, and procure subscriptions of stock for the undertaking, and to receive payments on account of stock subscriptions, and to cause plans and surveys to be made, and to acquire any plans and surveys now existing, and to deposit in any chartered bank of Canada 35 all moneys received by them on account of stock subscriptions, and to withdraw the same for the purposes of the undertaking and to receive for the company any grant, loan, bonus or gift made to it in aid of the undertaking, and to enter into any agreement respecting the conditions or disposition of any gift 40 or bonus in aid of the railway, and with all such other powers as under "The Railway Act of Ontario," are vested in ordinary directors.

**Their powers.** 7. The said directors are hereby empowered to take all necessary measures for opening the stock books for the sub- 45 scription of parties desirous to become shareholders in the said company, and to determine and allot to parties subscribing for stock in the said company, the number of shares (if any) that parties so subscribing may have and hold in the capital stock aforesaid: Provided always, that no subscription in the said 50 stock books shall create the party or parties so subscribing a shareholder or shareholders in the said company, without and until the authorization thereof by the directors of the company for the time being.

8. No subscription for shares in the capital of the company shall be binding on the company unless and until ten per centum of the amount subscribed has been actually paid thereon. Subscriptions for shares not binding on company until ten per cent. paid.
- 5 9. When and so soon as shares to the amount of one hundred thousand dollars in the capital stock of the said company shall have been subscribed, and the sum of ten thousand dollars paid thereon, the provisional directors shall call a general meeting of the subscribers to the said capital stock, at the city First general meeting.
- 10 of Toronto, for the purpose of electing directors of the said company, giving at least two weeks' notice by advertisement in the *Ontario Gazette* and in one of the daily papers published in the city of Toronto, of the time, place and purpose of said meeting.
- 15 10. At such general meeting the subscribers for the capital stock assembled, in person or by proxy, who shall have paid up ten per centum thereon, shall choose not less than nine nor more than thirteen persons to be directors of the said company (of whom five shall be a quorum), and may also pass such rules, First election of directors.
- 20 regulations and by-laws as may be deemed expedient: Provided they be not inconsistent with this Act and "The Railway Act of Ontario."
11. No person shall be qualified to be elected as such director by the shareholders unless he be a shareholder holding Qualification of directors.
- 25 at least fifty shares of stock in the company, and unless he has paid up all calls thereon.
12. Thereafter the general annual meeting of the shareholders of the said company shall be held at such place in the city of Toronto, and on such days and at such hours as may be Annual meetings.
- 30 directed by the by-laws of the company, and public notice thereof shall be given at least fourteen days previously in the *Ontario Gazette*, and in one or more newspapers published at the city of Toronto, and special general meetings of the shareholders of the said company may be held at such places in the Annual meetings.
- 35 of Toronto, and at such times, and in such manner, and for such purposes as may be provided by the by-laws of the company.
13. For the purposes of the company they may issue bonds, and to secure the same and the interest thereon they may Issue of bonds authorized.
- 40 mortgage the undertaking or part thereof in the manner provided in the Railway Act of Ontario, and in this respect the provisions of the said Railway Act shall apply; and it shall be lawful for any other railway company or companies to agree for the loan of its or their credit, either by direct Issue of bonds authorized.
- 45 guarantee or traffic arrangements or otherwise, to secure the payment of the interest on said bonds or any part thereof.
14. It shall be competent for the directors of the said company to issue as paid up stock any ordinary stock of the company, and allot and pay the same for right of way, plant, Payment for right of way may be made in stock.
- 50 rolling stock, or material of any kind, and also for the services of contractors, engineers and other persons, who may have been, are or may be engaged in and about the prosecution of the proposed undertaking.

Negotiable  
instruments.

15. The said company shall have power to become a party to promissory notes and bills of exchange for sums not less than one hundred dollars, and any such note or bill made, accepted, or indorsed by the president or vice-president of the company, and countersigned by the secretary, and under the authority of a quorum of the directors shall be binding on the company; and any such promissory note or bill of exchange so made shall be presumed to have been so made with proper authority until the contrary be shewn, and in no case shall it be necessary to have the seal of the company affixed to such note or bill, nor shall the officers signing the same be individually responsible for the same unless issued without the sanction and authority of the board as aforesaid: Provided, however, that nothing in this section shall be construed to authorize the said company to issue any note or bill of exchange payable to bearer, or intended to be circulated as money, or as the notes or bills of banks. 5 10 15

Calls.

16. The directors may at any time call upon the shareholders for such instalments upon each share and in such proportions as they may see fit, but no such instalment shall exceed ten per centum on the subscribed stock, and thirty days' notice of each call shall be given as prescribed by the by-laws of the company. 20

Agreements  
with other  
companies.

17. The said company shall have power to make running arrangements with any railway company which is or are lawfully empowered to enter into such an agreement, upon terms to be approved by two-thirds in value of the shareholders at a special general meeting to be held for that purpose; and it shall also be lawful for the said company to enter into any agreement with any other railway company whose line can connect therewith, and which is lawfully authorized to enter into such an agreement for the purchase or leasing from such other company any other railway or part thereof, or the use thereof, or for leasing or hiring any locomotives, tenders, plant, rolling stock, or other property of either or of both or any part thereof, or touching any service to be rendered by the one company to the other and the compensation therefor, if the arrangements and agreements shall be approved of by two-thirds in value of the shareholders voting in person or by proxy at a special general meeting to be called for that purpose, and every such agreement shall be valid and binding and shall be enforced by courts of law according to the terms and tenor thereof. 25 30 35 40

Equal traffic  
facilities to be  
given to all  
otherrailways.

18. The said company shall at all times work and operate its railway so as to afford equal facilities for the receipt, transfer and transportation to, from, or over the same of the traffic of all other lines of railway in Canada which may connect with the railway of the said company, and the said company shall establish, levy and collect equal tolls, rates and charges in respect of the traffic received from, or to be delivered to all such other railways, and so that the same shall be received, transferred, transported and delivered, and the tolls and charges in respect of the same shall be levied and collected on terms of absolute equality and without discrimination of any sort in favour of or against the traffic of any other such railway. The word "traffic" in this section shall mean not only passengers 45 50 55

and their baggage, goods, animals and things conveyed by railway, but also cars, trucks and vehicles of any description, adapted for running on any railway and whether loaded or unloaded, owned or leased by, or consigned to any such other connecting railway in Canada.

19. Conveyances of land to the said company for the purposes of this Act may be made in the form in the schedule hereto annexed, or to the like effect, and may be registered.

Form of conveyance.

20. Whenever it shall be necessary, for the purpose of procuring sufficient lands for stations or gravel pits, or for constructing, maintaining, and using the said railway, or for opening a street to any station from any existing highway; the said company may purchase, hold, use, or enjoy such lands, and also the right of way thereto, if the same be separated from their railway, and may sell and convey the same, or parts thereof, from time to time as they may deem expedient; and may also make use of, for the purposes of the said railway, the water of any stream or water course on or near which the said railway passes, doing, however, no unnecessary damage thereto, and not impairing the usefulness of such stream or water course, and the compensation to be paid to the owners for such lands, or the use of such water, as also the powers of the said company to take possession thereof, shall, in case of difference, be ascertained and exercised in the manner provided in the sections of the "Railway Act of Ontario" respecting "lands and their valuation."

Power to take land for gravel pits, etc., and to use streams.

21. The said company may also construct an electric telegraph line in connection with their railway, and for the purpose of constructing, working, and protecting the said telegraph line, the powers conferred upon telegraph companies by the Act respecting telegraph companies, being chapter one hundred and fifty one of the Revised Statutes of Ontario, are hereby conferred upon the said company.

Powers to construct telegraph line.

22. All the provisions of the Railway Act of Ontario except as varied by this Act, shall apply to the said company.

Railway Act to apply.

23. The railway shall be commenced within five years, and completed within ten years after the passing of this Act.

Commencement and completion of railway.

SCHEDULE.

(Section 23.)

KNOW ALL MEN, by these presents that in consideration of \_\_\_\_\_ dollars paid to \_\_\_\_\_ by the \_\_\_\_\_ company, the receipt whereof is hereby acknowledged, do grant and convey, and \_\_\_\_\_ in consideration of \_\_\_\_\_ dollars paid to \_\_\_\_\_ by the said company, the receipt whereof is hereby acknowledged, do grant or release All the certain parcel of land situated \_\_\_\_\_ (describe the lands)

the same having been selected and laid out by the said company for the purposes of their railway; to hold with the appurtenances unto the said company, their successors and assigns, and the wife of the said do hereby bar dower in the said lands  
 As witness hand and seal, this day of  
 A.D. 188

Signed, sealed, and delivered, }  
 In the presence of }



BILL.

An Act to incorporate the Ontario and  
Sault Ste. Marie Railway Company.

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First Reading,      February, 1881.

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Mr. FERRIS.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to incorporate the Ontario Sault Ste. Marie  
Railway Company.

WHEREAS the construction of a railway to connect the Preamble.  
railways of the Province of Ontario with Sault Ste. Marie,  
with power to build a branch or branches to Lake Nipissing  
and Lake Temiscaming would be of general benefit to the  
Province of Ontario; and whereas a petition has been pre-  
sented praying the incorporation of a company for that pur-  
pose, and it is expedient to grant the prayer of such petition ;  
Therefore Her Majesty, by and with the advice and consent  
of the Legislative Assembly of the Province of Ontario, enacts  
as follows :—

10 1. James D. Edgar, H. H. Cook, M.P.P., J. M. Ferris, M.P.P., Incorporation.  
George A. Cox, Robert Jaffray, James Holden, William Gooder-  
ham, Jr., Sir William P. Howland, W. J. Copp, Amelius  
Irving, and J. M. Williams, together with all such persons  
and corporations as shall become shareholders in the company  
15 hereby incorporated, shall be and are hereby constituted a  
body corporate and politic, by and under the name of "The  
Ontario Sault Ste. Marie Railway Company."

2. The said company shall have full power and authority Location of  
to lay out, construct, and complete a double or single iron or line.  
20 steel railway of a gauge of four feet eight and one-half inches  
in width, from a point at or near Gravenhurst, in the dis-  
trict of Muskoka, or at such other point as the Directors  
may determine; thence extending northerly to French river,  
thence extending westerly and northerly, or in such way  
25 as the directors may determine, to Sault Ste. Marie, or to  
some point on Lake Superior near Sault. Ste. Marie, in the  
district of Algoma, with power to build extensions southerly  
to connect with the railway system of Ontario in such manner  
as the directors may determine, and with power to build the said  
30 railway, in sections as the directors may determine; also, with  
power to build a branch or branches to Lake Nipissing and  
Lake Temiscaming, and all the company's powers shall be ap-  
plicable to said branches.

3. Notwithstanding anything contained in the section of Powers as to  
35 "The Railway Act of Ontario" respecting "lands and their acquiring  
valuation," the said company may acquire land and water-lot lands.  
property for the purpose of their undertaking, in the manner  
provided for by the said sections, and may acquire, under the  
provisions in that behalf of the said Act, and hold such width  
40 of land on the sides of the railway and its branches at any  
point as may be needed for the erection of snow-drift fences

or barriers, at a sufficient distance from the track to prevent the obstruction of the line by drifting snow, and the compensation to be paid to the owners for such lands, as also the power of the company to take possession thereof, shall, in case of difference, be ascertained and exercised in the manner provided by the said sections of the said Railway Act.

**Capital stock.** 4. The capital stock of the company shall be two millions of dollars, with power to increase the same, in the manner provided in "The Railway Act of Ontario," to be divided into shares of one hundred dollars each; and the money so raised shall be applied, in the first place, to the payment of all fees, expenses and disbursements of and incidental to the passing of this Act, and the organization of the said company, and for making the surveys, plans, and estimates connected with the works hereby authorized, and the procuring of any plans and estimates heretofore made, and all the remainder of said moneys shall be applied to the making, equipping, completing and maintaining of the said railway, and to the other purposes of this Act.

**Aid to company.** 5. The said company may receive, either from any government or from any persons or bodies, corporate, municipal or politic, who may have power to make or grant the same, bonuses, loans or gifts of money, or securities for money, or grants of land, in aid of the construction, equipment, or maintenance of the said railway, and upon accepting such aid the company may agree to any conditions as to running powers or traffic arrangements in favour of any other lines which may be imposed by the government granting said aid.

**Provisional directors.** 6. The persons named in the first section of this Act together with five persons to be named hereafter by the Lieutenant - Governor in Council, shall be and are hereby constituted provisional directors of the said company, of whom *nine* shall be a quorum and shall hold office as such until the first election of directors under this Act, and shall have power forthwith to open stock books, and procure subscriptions of stock for the undertaking, and to receive payments on account of stock subscriptions, and to cause plans and surveys to be made, and to acquire any plans and surveys now existing, and to deposit in any chartered bank of Canada all moneys received by them on account of stock subscriptions, and to withdraw the same for the purposes of the undertaking and to receive for the company any grant, loan, bonus or gift made to it in aid of the undertaking, and to enter into any agreement respecting the conditions or disposition of any gift or bonus in aid of the railway, and with all such other powers as under "The Railway Act of Ontario," are vested in ordinary directors: Provided, also, that in the event of any of the persons named as provisional directors in the first section of this Act declining to act, the Lieutenant-Governor in Council may, in addition to naming five directors as aforesaid, name as provisional director a person in the place of such provisional director so declining to Act.

**Their powers.** 7. The said directors are hereby empowered to take all necessary measures for opening the stock books for the subscription of parties desirous to become shareholders in the said

company, and to determine and allot to parties subscribing for stock in the said company, the number of shares (if any) that parties so subscribing may have and hold in the capital stock aforesaid: Provided always, that no subscription in the said stock books shall create the party or parties so subscribing a shareholder or shareholders in the said company, without and until the authorization thereof by the directors of the company for the time being.

8. No subscription for shares in the capital of the company shall be binding on the company unless and until ten per centum of the amount subscribed has been actually paid thereon.

Subscriptions for shares not binding on company until ten per cent. paid.

9. When and so soon as shares to the amount of *two hundred and fifty* thousand dollars in the capital stock of the said company shall have been subscribed and *allotted*, and the sum of *twenty-five* thousand dollars paid thereon, the provisional directors shall call a general meeting of the *shareholders* to the said capital stock, at the city of Toronto, for the purpose of electing directors of the said company, giving at least two weeks' notice by advertisement in the *Ontario Gazette* and in one of the daily papers published in the city of Toronto, of the time, place and purpose of said meeting.

First general meeting.

10. At such general meeting the *shareholders* assembled, in person or by proxy, who shall have paid up ten per centum on *their shares*, shall choose not *more than nine persons* to be directors of the said company (of whom five shall be a quorum), and may also pass such rules, regulations and by-laws as may be deemed expedient: Provided they be not inconsistent with this Act and "The Railway Act of Ontario;" and provided also that, in addition to such directors, the Lieutenant-Governor in Council shall have the right, in the event of the Government granting aid to the said company, to nominate three directors to the said company; and in the event of such nomination, seven shall be a quorum.

First election of directors.

11. No person shall be qualified to be elected as such director by the shareholders unless he be a shareholder holding at least *one hundred* shares of stock in the company, and unless he has paid up all calls thereon.

Qualification of directors.

12. Hereafter the general annual meeting of the shareholders of the said company shall be held at such place in the city of Toronto, and on such days and at such hours as may be directed by the by-laws of the company, and public notice thereof shall be given at least fourteen days previously in the *Ontario Gazette*, and in one or more newspapers published at the city of Toronto, and special general meetings of the shareholders of the said company may be held at such places in the city of Toronto, and at such times, and in such manner, and for such purposes as may be provided by the by-laws of the company.

Annual meetings.

13. For the purposes of the company *the directors may* issue bonds, and to secure the same and the interest thereon they may mortgage the undertaking or part thereof in the manner provided in the Railway Act of Ontario, and in this respect the

Issue of bonds authorized.

provisions of the said Railway Act shall apply; and it shall be lawful for any other railway company or companies to agree for the loan of its or their credit, either by direct guarantee or traffic arrangements or otherwise, to secure the payment of the interest on said bonds or any part thereof. 5

Payment for right of way may be made in stock.

14. It shall be competent for the directors of the said company to issue as paid up stock any ordinary stock of the company, and allot and pay the same for right of way, plant, rolling stock, or material of any kind, and also for the services of contractors, engineers and other persons, who may have been, 10 are or may be engaged in and about the prosecution of the proposed undertaking.

Company may become parties to notes, etc.

15. The said company shall have power and authority to become parties to promissory notes and bills of exchange, for sums not less than one hundred dollars, and any such promissory note or bill made, accepted, or indorsed by the president or vice-president of the company, and countersigned by the secretary and treasurer of the said company, and under the general or special authority of a majority of a quorum of the directors, shall be binding on the said company; and every 20 such promissory note or bill of exchange so made shall be presumed to have been made with proper authority until the contrary be shewn, and in no case shall it be necessary to have the seal of the said company affixed to such promissory note or bill of exchange; nor shall the said president, or vice-presi- 25 dent, or the secretary and treasurer, be individually responsible on any bill or note made, accepted or indorsed by him or them on behalf of the company, provided the consideration for the said bill or note was received by the company, unless the said promissory notes or bills of exchange have been issued without 30 the sanction and authority, either general or special, of the board of directors, as herein provided and enacted: Provided, however, that nothing in this section shall be construed to authorize the said company to issue notes or bills of exchange payable to bearer, or intended to be circulated as money, or as 35 the notes or bills of a bank. 

Calls.

16. The directors may at any time call upon the shareholders for such instalments upon each share and in such proportions as they may see fit, but no such instalment shall exceed ten per centum on the subscribed stock, and thirty days' notice 40 of each call shall be given as prescribed by the by-laws of the company.

Agreements with other companies.

17. The said company shall have power to make running arrangements with any railway company which is lawfully empowered to enter into such an agreement, upon terms to 45 be approved by two-thirds in value of the shareholders at a special general meeting to be held for that purpose; and it shall also be lawful for the said company to enter into any agreement with any other railway company whose line connects therewith, and which is lawfully authorized to enter into such 50 an agreement for leasing or hiring any locomotives, tenders, plant, rolling stock, or other property of either or of both or any part thereof, or touching any service to be rendered by the one company to the other and the compensation therefor, if the arrangements and agreements shall be approved of 55 by two-thirds in value of the shareholders voting in person

or by proxy at a special general meeting to be called for that purpose, and every such agreement shall be valid and binding and shall be enforced by courts of law according to the terms and tenor thereof.

5 **18.** The said company shall at all times work and operate its railway so as to afford equal facilities for the receipt, trans- Equal traffic  
fer and transportation to, from, or over the same of the traffic facilities to be  
of all other lines of railway in Canada which may connect with given to all  
the railway of the said company, and the said company shall other railways.  
10 establish, levy and collect equal tolls, rates and charges in re-  
spect of the traffic received from, or to be delivered to all such  
other railways, and so that the same shall be received, trans-  
ferred, transported and delivered, and the tolls and charges in  
respect of the same shall be levied and collected on terms of  
15 absolute equality and without discrimination of any sort in  
favour of or against the traffic of any other such railway. The  
word "traffic" in this section shall mean not only passengers  
and their baggage, goods, animals and things conveyed by rail-  
way, but also cars, trucks and vehicles of any description,  
20 adapted for running on any railway and whether loaded or un-  
loaded, owned or leased by, or consigned to any such other con-  
necting railway in Canada.

**19.** Conveyances of land to the said company for the pur- Form of con-  
poses of this Act may be made in the form in the schedule veyance.  
25 hereto annexed, or to the like effect, and may be registered.

**20.** Whenever it shall be necessary, for the purpose of pro- Power to take  
curing sufficient lands for stations or gravel pits, or for con- land for gravel  
structing, maintaining, and using the said railway, or for open- pits, etc., and  
ing a street to any station from any existing highway; the to use streams.  
30 said company may purchase, hold, use, or enjoy such lands, and  
also the right of way thereto, if the same be separated from  
their railway, and may sell and convey the same, or parts there-  
of, from time to time as they may deem expedient; and may  
also make use of, for the purposes of the said railway, the  
35 water of any stream or water course on or near which the said  
railway passes, doing, however, no unnecessary damage there-  
to, and not impairing the usefulness of such stream or water  
course, and the compensation to be paid to the owners for such  
lands, or the use of such water, as also the powers of the said  
40 company to take possession thereof, shall, in case of difference,  
be ascertained and exercised in the manner provided in the  
sections of the "Railway Act of Ontario" respecting "lands  
and their valuation."

**21.** The said company may also construct an electric tele- Powers to con-  
graph line in connection with their railway, and for the pur- struct tele-  
pose of constructing, working, and protecting the said telegraph graph line.  
45 line, the powers conferred upon telegraph companies by the  
Act respecting telegraph companies, being chapter one hundred  
and fifty one of the Revised Statutes of Ontario, are hereby  
50 conferred upon the said company.

**22.** All the provisions of the Railway Act of Ontario except Railway Act  
as varied by this Act, shall apply to the said company. to apply.

**23.** The railway shall be commenced within *three* years, and Commence-  
completed within *six* years after the passing of this Act. ment and com-  
pletion of rail-  
way.





BILL.

An Act to incorporate the Ontario Sault  
Ste. Marie Railway Company.

*(Reprinted as amended.)*

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First Reading, 1st March, 1881.

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Mr. FERRIS.

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TORONTO :

PRINTED BY C. BLACKETT ROBINSON

No. 126.]

# BILL.

[1881.

## An Act to amend the Assessment Act.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section one hundred and forty-three of the Assessment Act is hereby repealed, and the following substituted in lieu thereof:

R. S. O., c. 180, s. 143, repealed and new section substituted.

Every treasurer shall be entitled to the sum of one dollar as commission in respect of every lot advertised by him for sale for taxes.

2. Section one hundred and forty-eight is amended by adding thereto the following: "but for any such deed containing more than one lot, the treasurer shall be entitled to demand and receive fifty cents extra for each additional lot."

Sec. 148 amended.

2nd Session, 4th Legislature, 44 Vic., 1881.

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BILL.

An Act to amend the Assessment Act.

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First Reading, 22nd February, 1881.

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MR. HAY.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to amend the law securing to wives and children the benefit of Assurances on the lives of their husbands and parents.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Section fifteen of the Revised Statutes of Ontario, chapter 5 one hundred and twenty-nine, intituled "An Act to secure to wives and children the benefit of Assurances on the lives of their husbands and parents," is hereby repealed, and the following substituted therefor: R. S. O., c. 129, s. 15, repealed and new section substituted.

15. Any person who effects any such policy of insurance under this Act may in writing require the assurance company issuing such policy to pay the bonuses or profits accruing thereunder or portions of the same to the insured, or to apply the same or portions of the same in reduction of the annual premiums payable by such insured in such way as he may direct; or to add the said bonuses or profits to the policy; and the said assurance company shall apply such bonuses or profits as such insured directs and according to the rates established by such company.

2. This Act shall apply to policies heretofore made and to 20 bonuses or profits now declared in respect of such policies, and to policies hereafter to be created under the said Act. Application of Act.

No. 127.

2nd Session, 4th Legislature, 44 Vic., 1881.

BILL.

An Act to amend the law securing to wives and children the benefit of Assurances on the lives of their husbands and parents.

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First Reading, 22nd February, 1881.

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Mr. GIBSON (*Hamilton*).

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act to amend the Municipal Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

It is hereby declared that the council of any municipality  
 5 which has heretofore granted aid by way of bonus, for the pro-  
 motion of manufactures within its limits under the provisions  
 of the Act of the Parliament of this Province, passed in the  
 thirty-sixth year of Her Majesty's reign, chapter forty-eight,  
 section three hundred and seventy-two, sub-section five, or of  
 10 the Municipal Act, section four hundred and fifty-four, sub-  
 section five, or which may hereafter grant such aid under  
 such last mentioned sub-section, might or may lawfully grant  
 such bonus by way of loan, and take from the person or persons  
 or body corporate to whom such bonus by way of loan has been  
 15 or may be granted, security for the re-payment of the same in  
 such manner and on such terms as have been or may be agreed  
 on between them.

Municipal  
 councils em-  
 powered to  
 grant bonus by  
 way of loan  
 and take  
 security for  
 repayment of  
 same.

2nd Session, 4th Legislature, 44 Vic, 1881.

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BILL.

An Act to amend the Municipal Act.

First Reading, 23rd February, 1881.

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Mr. GINSON (*Hamilton*).

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to further amend the Revised Statute respecting Mortgages and Sales of Personal Property.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Another statement in accordance with the provisions of  
 5 the tenth section of the Revised Statute, chaptered one hundred and nineteen, respecting mortgages and sales of personal property, as amended by the Act passed in the forty-third year of Her Majesty's reign, chapter fifteen, duly verified as required by that section, shall be filed in the office of the clerk of the  
 10 county court of the county wherein the goods and chattels described in the mortgage are then situate, within thirty days next preceding the expiration of the term of one year from the day of the filing of the statement required by the said tenth section, or such mortgage, or copy thereof, shall cease to be  
 15 valid as against the creditors of the persons making the same, and as against purchasers and mortgagees in good faith for valuable consideration, and so on from year to year, that is to say, another statement as aforesaid, duly verified, shall be filed within thirty days next preceding the expiration of one year  
 20 from the day of the filing of the former statement, or such mortgage, or copy thereof, shall cease to be valid as aforesaid.

Yearly statement to be filed or mortgage invalidated.

BILL.

An Act to further amend the Revised Statute respecting Mortgages and Sales of Personal Property.

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First Reading, 24th February, 1881.

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Mr. MEREDITH.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to confirm certain Mortgages made to Building Societies and Sales made thereunder.

WHEREAS, by the several Acts of the late Province of Upper Canada and of the late Province of Canada, certain societies known as building societies were thereby authorized to be incorporated, as in the several Acts respecting building societies is fully set forth, and by the said Acts such societies were authorized to take mortgages on any real estate belonging to members of the said society at the time of his borrowing money from the society, or on any other real estate acquired by such member until the amount or value of his shares, with the interest thereon, had been fully paid; and it was further provided that every such society might take and hold any real estate or securities thereon *bona fide* mortgaged or assigned to it, either to secure the payment of the shares subscribed for by its members or for the other purposes in said Acts mentioned, and might proceed on such mortgages for the recovery of the moneys thereby secured either at law, or in equity, or otherwise, and generally might pursue the same course, exercise the same powers, and take and use the same remedies to enforce the payment of any debt or demand due to the society, as any person or body corporate might by law take or use for a like purpose; and it was thereby further enacted, that all real and personal estate, property and effects, and all titles, securities, instruments and evidences, and all rights and claims of or belonging to the society, should be vested in the president and treasurer of the said societies and their successors in office for the time being, for the use of the society and the respective members thereof, according to their respective claims and interests, and should for all purposes of bringing or defending actions or suits, civil or criminal, be deemed to be and should be stated to be the property of the president and treasurer, in the proper names of the president and treasurer for the time being; and it was thereby further enacted, that whenever any such society had received an assignment, mortgage or transfer of any real estate, to secure the payment of any advances, and containing an authority to such society to sell the real estate in case of non-payment of any stipulated number of instalments or sum of money, and to apply the proceeds of such sale to the payment of the advances, interest, and other charges due to the society, such stipulations and agreements should be valid and binding, and the society might cause the same to be enforced either by foreclosure or by an action or proceeding in either of Her Majesty's Superior Courts of Common Law, and which action might be brought in the names of the president and treasurer of the society, describing them as such, or in the corporate name of the society; and whereas, a great number of building societies were incorporated

under the provisions of the said in part recited Acts, and many mortgages and sales were executed and made in supposed compliance with the provisions thereof; and whereas, many mortgages were executed to the president and treasurer of such societies, and lands conveyed to such president and treasurer in the proper names of such president and treasurer, and to their successors in the office of president and treasurer of such society and their assigns, to have and to hold the lands thereby conveyed, mortgaged or assigned, or intended so to be, to the president and treasurer of such society as aforesaid, their successors in office as aforesaid and their assigns, to the use of the president and treasurer of such society as aforesaid, their successors and assigns for ever, upon trust to and for the benefit and behalf of such society, according to the form of the statute in such case made and provided; and whereas, it was in and by such mortgages declared, that on default being made, it should and might be lawful for the said president and treasurer of such society, their successors or assigns, to enter upon and sell the said lands in manner therein set forth; and whereas, in many cases the power of sale in such mortgages contained was exercised, and deeds under, and in pursuance of such power executed by persons holding the offices of president and treasurer of such societies other than and different from the persons to whom the lands covered by such mortgages were granted, and in whom such powers were vested, and doubts have arisen as to the estate vested in such president and treasurer of such societies as aforesaid, and as to the sales under the powers contained in such mortgages, and the exercise of such powers, and the execution of deeds under and in pursuance thereof, and it is desirable and expedient to remove such doubts and confirm the titles acquired to lands by, through and under such mortgages as aforesaid, and under the powers of sale contained therein;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Mortgages to building societies or to president, etc., thereof declared to have been mortgages in fee.

1. All mortgages of lands to building societies, or to the president and treasurer of such societies, and their successors in office for the time being, for the use of or in trust for such society, and the respective members thereof, according to their respective claims and interests, are hereby declared to have been and to be mortgages in fee, and all lands by such mortgages conveyed, or intended so to be, are hereby declared to have vested in fee in the president and treasurer of the society to whom such lands were conveyed, and that upon the death, resignation or removal from office of each and every such president and treasurer, or either of them, and as often as the case happened, and the appointment of a successor or successors took place, the said lands so conveyed by such mortgages as aforesaid, are hereby declared, subject to the same uses and trusts as the same were respectively subject to, to have vested, and to vest, in fee in each and every succeeding president and treasurer of any such society, any law, usage or custom to the contrary thereof in anywise notwithstanding.

Sales of land under foreclosure or legal proceedings validated.

2. All sales of real estate by any such building society, or any president and treasurer thereof, whether the stipulation or agreement in respect thereof was enforced by foreclosure, or by an action or proceeding in either of Her Majesty's superior

courts of common law or otherwise, and whether such proceedings for foreclosure or actions or proceedings at law, were brought in the names of the president and treasurer of such society described as such, or in the corporate name of such society, are hereby validated and confirmed, and the purchaser or purchasers at such sales and the grantee or grantees in any deed or conveyance of the lands so sold are hereby declared to have acquired thereby and taken thereunder an indefeasible estate of inheritance, in fee simple, in the lands thereby conveyed and comprised therein.

3. It is hereby declared that all building societies incorporated under the said Acts, and the president and treasurer of such societies for the time being had full power, right and authority to exercise and execute any and every power of sale contained in any mortgage to such society, or to the president and treasurer thereof, in the same manner, to the same extent, and in as full and ample a manner as any person or body corporate whatever, and the purchaser or purchasers at any sale of lands had in pursuance of or under such power of sale, and the grantee or grantees in any deed or conveyance of the lands so sold are hereby declared to have acquired thereby and taken thereunder an indefeasible estate of inheritance, in fee simple, in the lands thereby conveyed and comprised therein.

Building societies might exercise powers of sale, etc.

4. All sales of lands and real estate made under and by virtue of any power of sale contained in any mortgage to any building society, or to the president and treasurer thereof, are hereby validated and confirmed, and all deeds and conveyances made in pursuance of and execution of such power are hereby validated and confirmed, whether such deed or conveyance be executed by the president and treasurer to whom such mortgage containing such power was given, or to the successor or successors of such president, or either of them, and whether such deed was executed by such president and treasurer, their or either of their successors, under their or either of their hands and seals, or under their or either of their hands, and the corporate seal of the society whereof they were president and treasurer respectively, and the grantee or grantees in such deed or conveyance are hereby declared to have acquired thereby and taken thereunder an indefeasible estate of inheritance, in fee simple, in the lands thereby conveyed and comprised therein.

Sales under powers and deeds executed in pursuance thereof validated.

BILL.

An Act to confirm certain Mortgages made  
to Building Societies, and Sales made  
thereunder.

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First Reading, 24th February, 1881.

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Mr. GIBSON (*Hamilton*).

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act respecting Market Fees.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

5 1. No municipal council shall have power to compel persons selling farm produce of any description, or other articles, within the municipality, to offer their produce for sale at any market established within the municipality, or to otherwise restrict the place or places at which sales may be made, so long as market fees are charged for the use of the established market or markets, nor shall any such council have power to impose market fees on persons who do not make use of the established market or markets, but market fees may be imposed, as heretofore, on all persons actually using any such market for the purpose of selling farm produce and other  
 10 articles thereat.  
 15

No person shall be obliged to sell at the market when fees are charged therefor.

2. The council of any municipality, having an established market, which does not impose market fees on persons resorting to and using the market may, as heretofore, regulate the place and manner of selling farm produce of any description,  
 20 and all other articles, and may prohibit the sale before o'clock in the forenoon, of such produce and other articles elsewhere than at the established market.

Place and manner of selling may be regulated as heretofore when fees are not charged.

3. Nothing herein contained shall prevent any municipal council from imposing fees or regulating, as heretofore, the  
 25 sale within the municipality of farm produce of every description, and other articles, if and so long as tolls are levied and collected by or under the authority of any county or township council, on the roads of any county or counties adjacent to such municipality, for a distance of  
 30 miles therefrom.

Market fees may be charged when tolls are levied on roads by adjacent municipalities.

BILL.

An Act respecting Market Fees.

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First Reading, 24th February, 1881.

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Mr. WOOD.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act respecting Market Fees.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. No municipal council shall have power to compel persons selling farm, *garden or dairy* produce of any description, within the municipality, to offer their produce for sale at any market established within the municipality, or to otherwise restrict the place or places at which sales may be made, so long as market fees are charged for the use of the established market or markets, nor shall any such council have power to impose market fees on persons who do not make use of the established market or markets, but market fees may be imposed, as heretofore, on all persons actually using any such market for the purpose of selling farm, *garden or dairy* produce and other articles thereat:  Provided always that nothing herein contained shall apply to sale of butchers meat in less quantities than by the quarter; and provided further, that the councils of cities, towns, and incorporated villages shall exercise the powers conferred upon them by sub-sections forty-two and fifty-four of section four hundred and sixty-six, of the Municipal Act, subject to the provisions, and not inconsistent with the objects of this Act. 

No person shall be obliged to sell at the market when fees are charged therefor.

2. The council of any municipality, having an established market, which does not impose market fees on persons resorting to and using the market may, as heretofore, regulate the place and manner of selling farm, *garden or dairy* produce of any description, and may prohibit the sale  thereof between the first day of May and the first day of November, before half-past nine o'clock, and between the first day of November and the first day of May, before ten o'clock in the forenoon, of such produce elsewhere than at the established market.

Place and manner of selling may be regulated as heretofore when fees are not charged.

 3. Nothing in this Act contained shall prevent the council of any municipality providing by by-law for the measuring of wood or the weighing of coal and imposing a fee therefor, or from imposing a fee on persons using the market scales for weighing hay, straw, fodder, wood, meat, farm produce or other articles, or from imposing a fee on persons actually making use of any cattle-yards or pens provided by the municipality for the sale of live stock. 

4. Nothing herein contained shall prevent any municipal council from imposing fees or regulating, as heretofore, the sale within the municipality of farm, *garden or dairy* produce of every description, and other articles, if and so long as tolls are levied and collected by or under the authority of any county

Market fees may be charged when tolls are levied on roads by adjacent municipalities.

council or township council, for the use of such township, on any road or highway adjacent to such municipality, or within ten miles thereof, upon which tolls were being levied on the twenty-fourth day of February, one thousand eight hundred and eighty-one.

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5. After a municipality has established a free market, tolls shall not thereafter be imposed or collected for travelling upon any road, or part of a road, within ten miles of the city, town or village establishing such free market, where tolls were not imposed or collected at the time of the passing of this Act, and 10 after tolls have been abandoned under the provisions of this Act they shall not thereafter be imposed or collected.

6. Nothing in this Act contained shall apply to any municipal council which has heretofore let its market tolls for a term yet unexpired, until such term has expired; but this 15 section shall not apply so as to delay the operation of this Act as to such municipal council for more than one year from the passing of this Act.

## BILL.

An Act respecting Market Fees.

First Reading, 24th February, 1881.

Second " 28th, " 1881.

Mr. WOOD.

TORONTO :

PRINTED BY C. BLACKETT ROBINSON.

An Act to amend the Municipal Act.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Section three hundred and thirty-three of the Municipal Act is hereby amended, by adding thereto the following sub-section :— R. S. O., c. 174, s. 333, amended.

(2) Provided always, that the council of any county or city may, by by-law or by-laws passed at any meeting of such council, without submitting the same for the assent of the electors of such county or city, as the case may be, for contracting such debt, raise such sums of money as may be required for erecting, building and furnishing a court house and offices, to be used in connection therewith, and for acquiring such land as may be necessary or convenient for the purposes of such court house and offices.

2. Section three hundred and thirty-four of the said Act is hereby amended, by adding after the word "expenditure" in the fourth line thereof, the words "other than a by-law to raise money for erecting, building and furnishing a court house and offices aforesaid, or for acquiring land as provided in the second sub-section of section three hundred and thirty-three." Sec. 334 amended.

BILL.

An Act to amend the Municipal Act.

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First Reading, 24th February, 1881.

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MR. PATTERSON.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act as to Drains and Streets affecting Railway Tracks.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act, and the respective provisions thereof, apply to every railway and railway company in respect of which the Legislature of Ontario has authority to enact such provisions respectively; and, in this Act, the expression "Railway Company" includes the owner or lessee of any such railway, and the contractor working or operating the same. Application of Act.
2. Where in the opinion of any municipal council it is necessary or proper in the public interest to have a drain along or across any railway track within such municipality, or where it appears to the council of any city or town that a street should be opened across any railway within the municipality, the council may procure an examination of the locality, to be made by an engineer or provincial land surveyor, and may procure a plan and estimate in detail, with proper specifications to be made of the work by such engineer or surveyor, and may thereupon give notice to the railway company, of the drain or street required, accompanied by a copy of the resolution of the council and of the report, plan, estimate and specifications of the engineer or surveyor. Proceedings by council where drain or street to be made across railway.
3. The notice is to be in writing, and is to be given with such copies as aforesaid to the president, superintendent, managing director, or secretary of the railway company, or the same may be sent by mail, prepaid and registered, addressed to any such officer, at the principal office of the company in Ontario, and the notice shall state the post office address of the clerk of the municipality, to which any notice from the railway company may be sent by mail, prepaid and registered. Notice to company.
4. In case it is proposed that a street should be opened across the railway, such plans, specifications and estimates shall amongst other things provide for:— Provisions to be contained in plans.
- (1) Sufficient planking being laid on each side of the rails so as to permit of the track being easily crossed, the top of such planking to be as nearly as practicable level with the top of the rails;
- (2) The construction of a cattle guard at each side of the street, suitable and sufficient to prevent cattle and animals from getting on the railway;
- (3) The erection of proper fencing upon the line of such street on each side up to the cattle guards;

## (4) The erection of sign-boards.

Resolution to state how expenditure is to be met.

5. In case the work proposed is a drain, the resolution of the council shall state whether it is intended to meet the expenditure by funds then in the hands of the corporation of the municipality, or to raise the necessary amount by assessment in the same or following year, or by creating a debt under the provisions of the Municipal Act in that behalf, and the plan and specifications shall, amongst other things, shew the location of the drain relatively to the railway, where an outlet is to be obtained, and the estimated maximum discharge and flow of water. 5 10

Unless company notifies objection drain or street may be constructed.

6. If the company, within thirty days after the day of the giving or posting of the notice, does not give to the council notice in writing, stating that the proposed drain or street opening is objected to by the company, and further stating the grounds of objection, the council may proceed with the construction of the drain or street agreeably to the report, plan and specifications of the engineer or surveyor, subject to the provisions of the Municipal Act. 15

Construction by railway company.

7. If the railway company gives notice within the said thirty days that the company will itself execute the proposed work at and for the amount estimated by such engineer or surveyor, the company shall forthwith, subject to the provisions of the fifteenth section, in the case of a drain, proceed with and execute the proposed work in accordance with the said report and plans of the engineer or surveyor, and shall be entitled to receive payment therefor from the municipality, according to the said estimate. 20 25

Reference to Commissioner of Public Works in case of objection by company.

8. In case the company gives notice that the proposed drain or street crossing, or the proposed mode of construction is objected to, the council may transmit to the Commissioner of Public Works a copy of the papers served or posted as aforesaid, and of the notice of objection, and the council shall at the same time give or transmit in manner aforesaid to the company, notice of such reference to the Commissioner of Public Works. 30 35

Work may be executed if approved by Commissioner.

9. If the Commissioner of Public Works shall concur in the propriety of the proposed work being executed according to the report, plans and specifications of such engineer or surveyor, or according to some modification thereof, the same may be executed accordingly. (R. S. O. c 165, sec. 9, sub.-ss. 15, 40 16; sec. 39 to 42; 49, etc.

Commissioner may direct examination of locality.

10. The Commissioner before disposing of the matter may, if he thinks fit, direct the Inspector of Railways, or some other competent person, to examine the locality and make his report in regard to any matters which the Commissioner may direct. 45

Expenses of reference to Commissioner

11. All expenses of and incidental to the reference to the Commissioner, whether of the inspection or of the parties, shall be paid by the municipality or company as the Commissioner may direct, and the Commissioner may assess and determine the amount to be so paid and to whom, or may direct that the same shall be, in whole or in part, ascertained by the taxing 50

officer of one of the courts, subject to such directions (if any) as the Commissioner may give.

12. The report or certificate of the Commissioner shall be final according to the tenor and effect thereof; and it shall not be open to either or any party, after such report or certificate is made, to raise any question as to the regularity or sufficiency of any of the prior proceedings directed by this Act or otherwise.

Commissioner's decision to be final.

13. In case the Commissioner of Public Works approves of the plan and specifications of the proposed work, the railway company may, within ten days of being notified of his decision, serve a notice upon the municipality that they will perform the work for the price named in the estimate, and they shall thereupon (subject to the provisions of the fifteenth section in the case of a drain) proceed with and execute the said proposed work.

Company may elect, after approval of plans by Commissioner, to do the work.

14. In case the Commissioner of Public Works modifies the plan or specifications, he may fix a price to be paid for the work, or if he does not, then the council of the municipality shall cause an estimate of the cost thereof to be served upon the railway company with a notice that the council is willing to pay such price for the work, and the company may, within thirty days of being notified of the amount so fixed, or of such service, serve a notice upon the municipality that the company will perform the work for the price named in such estimate, and the company shall (subject to the provisions of the fifteenth section in the case of a drain) thereupon proceed and execute the proposed work.

Company may elect if plans modified by Commissioner to do the work.

15. Where the railway company elects to construct any drain under this Act and it is stated in the resolution that the cost of such work is to be met by the municipality creating a debt under the Municipal Act, the railway company shall not proceed with the work at the expense of the municipality until the assent of the electors has been procured to the required by-law, but this shall not prevent the company receiving from the municipality the value of such work in case the company should think fit to proceed therewith, pending the submission of such by-law, and the by-law is afterwards assented to by the electors.

If resolution requires assent of electors company not to proceed with work until such assent is given.

16. Where any railway company elects to proceed with the execution of any work under this Act and does not proceed therewith with reasonable diligence, the council of the municipality may take the same out of the hands of the company and itself do what is necessary to perform or complete the required work, or may apply for a mandamus to compel the company to proceed therewith and complete the same, and when the railway company does not elect in manner hereinbefore provided itself to do the work, the council of the municipality may proceed with the work and execute the same.

When municipality may perform or complete work.

17. The municipal council shall pay to the railway company within three months after the same shall be agreed upon or determined by arbitration under the Municipal Act, one half of the value of the land of the railway company occupied by the said street, and the value of the lands of the company used for

Municipality to pay company for land occupied by street.

a drain, in case such drain is not carried to a depth of at least five feet, and the said street across the said track shall (if practicable) be laid out so as to be of the same width as the street of which it is a continuation.

Claim by company for injury caused by works.

18. If the company claims that the construction of the proposed works will injure the company beyond the value of the land used, such company shall, in the notice given under the eighth section, state its claim, or if the company does not object to the work but claims that injury will be done it, as aforesaid, the company shall give, in like manner, a notice of such claim; and in case the Commissioner shall be of opinion that the company is entitled to compensation in that behalf, he may either himself determine the amount thereof to be paid by the municipality, or may direct that the same should be determined by arbitration under the Municipal Act. 5  
10  
15

Company to repair street crossing and municipality to repair drains.

19. All street crossings constructed under this Act shall thereafter be kept in proper repair by the railway company, and all drains constructed under this Act shall be kept in proper repair by the municipality, or in case of default, then by the railway company, and the railway company shall have the right to recover from the municipality the cost of all repairs made by such company, on account of the default of the municipality to make the same. 20

## BILL.

An Act as to Drains and Streets affecting  
Railway Tracks.

First Reading, 28th February, 1881.

The ATTORNEY-GENERAL.

TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## The Municipal Amendment Act of 1881.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Sub-section three of section seventy of the Municipal Act is hereby amended by adding thereto the following words: "but in cities where the population exceeds fifty thousand, as shewn by the last general census, the qualification shall be freehold to three thousand dollars or leasehold to five thousand dollars." R. S. O., c 174, s. 70, sub-s. 3, amended.
- 10 2. Section one hundred and forty of the said Act is amended by striking out the words "a mark" in the fourth line thereof, and inserting the words "his initials" in lieu thereof. Sec. 140, amended.
- 15 3. Section one hundred and fifty of the said Acts, letter (g), is amended by striking out the words "the voters' lists with the oath in the form of schedule 'G,' annexed thereto." Sec. 150, amended.
- 20 4. Sub-section two of said section one hundred and fifty is amended by striking out the words "before placing the voters' list in its proper packet," and substituting therefor the words "before returning the said voters' list to the clerk of the municipality," and by adding to said sub-section two, after the words "voters' list" in the last line thereof, the following: "and such voters' list and declaration may be inspected at any time in presence of the clerk, by any elector of the municipality." Sec. 150, sub-s. 2, amended.
- 25 5. Section one hundred and sixty-five of the said Act is hereby amended by adding thereto the following words: "But no candidate shall be present at the marking of a ballot by an incapacitated voter, or a voter unable to read, under section one hundred and forty-four." Sec. 165, amended.
- 30 6. Section two hundred and seventy-three of the said Act is amended by adding the following proviso: "Provided that where an attorney, solicitor or counsel, is employed by any municipality, whose remuneration is wholly or partly by salary, annual or otherwise, the municipality shall, notwithstanding, have the right to recover and collect lawful costs in all suits and proceedings in the same manner as if such attorney, solicitor or counsel, was not receiving such salary, and whether such costs have been assigned to such attorney, solicitor or counsel, as part of his remuneration or not." Sec. 173, amended.
- 35

R. S. O., c.  
174, s. 333,  
amended.

7. Section three hundred and thirty-three of the said Act is hereby amended, by adding thereto the following sub-section :—

(2) Provided always, that where a county and city are united for judicial purposes the council of the county or city may, by by-law or by-laws passed at any meeting of such council, without submitting the same for the assent of the electors of such county or city, as the case may be, for contracting such debt, raise such sums of money as may be required for erecting, building and furnishing a court house and offices, to be used in connection therewith, and for acquiring such land as may be necessary or convenient for the purposes of such court house and offices.

Sec. 334  
amended.

8. Section three hundred and thirty-four of the said Act is hereby amended, by adding after the word "expenditure" in the fourth line thereof, the words "other than a by-law to raise money for erecting, building and furnishing a court house and offices aforesaid, or for acquiring land as provided in the second sub-section of section three hundred and thirty-three."

Sec. 358 re-  
pealed, and  
new section  
substituted.

9. Section three hundred and fifty-eight of the said Act is hereby repealed, and the following substituted in lieu thereof :

(358) If any part of the produce of the special rate levied in respect of any debt, and at the credit of the sinking fund account, or of the special rate account thereof, cannot be immediately applied towards paying the debt, by reason of no part thereof being yet payable, the council shall, from time to time, invest the same in government securities, municipal debentures, or in first mortgages on real estate held and used for farming purposes, and being the first lien on such real estate, or otherwise as the Lieutenant-Governor in Council may by general or special order direct; and from time to time, as such securities mature, may invest in other like securities; no sum so invested in mortgages shall exceed two-thirds of the value of the real estate on which it is secured according to the last revised and corrected assessment roll at the time it is invested;

(2) The council of such municipality shall have power to regulate, by by-law, the manner in which such investments shall be made.

Sec. 436,  
amended.

10. Section four hundred and thirty-six of the said Act is amended by adding the following sub-section :

(3) The council may provide, by by-law, to require such persons as may be sent to such industrial farm or other place to work on the said farm, or at any work or service for the said municipality city at such times, and for such hours, and at such trade or labour as they may appear to be adapted for respectively, and to buy and sell material therefor, and to apply the earnings, or parts thereof, of such persons for their maintenance or the maintenance of the wife and child or wife or children (if any) of such persons, or for the general maintenance of the farm or other place as aforesaid, or in aid of such persons to reach their friends (if any) or any place to which it may be deemed advisable to send them.

Sec. 438, sub-s.  
2 repealed, and  
new sub-sec.  
substituted.

11. Sub-section two, of section four hundred and thirty-eight of the said Act is hereby repealed, and the following substituted in lieu thereof :

(2) For committing and sending, with or without hard labour, to the Workhouse, or House of Correction, or to the Industrial Farm, House of Industry, House of Refuge, or House for the Poor, Aged, and Infirm, or lock-up, or at any work or service for the said municipality as aforesaid, by the mayor, police magistrate, or justice of the peace, while having jurisdiction in the municipality, such disorderly persons, drunkards, vagrants, indigent persons, and such description of persons as are set forth or referred to in section three hundred and sixty-nine of the Act thirty-six Victoria, chapter forty-eight, and as may by the council be deemed, and by by-law be declared expedient; and such Farm, House of Correction, House of Industry, House of Refuge, or House for the Poor, Aged, or Infirm, lock-up house, or ground held as aforesaid, shall, for the purposes in this sub-section mentioned, be deemed to be within the municipality and the jurisdiction thereof.

12. Sub-section fifteen of section four hundred and sixty-six of the said Act is hereby repealed, and the following substituted in lieu thereof:

Sec. 466, sub-s. 15 repealed, and new sub-sec. substituted.

(15) For preventing and abating public nuisances, and for preventing common begging or persons in the street from importuning others for help or aid in money, or deformed, or malformed, or diseased persons, from exposing themselves, or being exposed in the public streets to excite sympathy or induce help or assistance from general or public charity.

13. Sub-section seventeen of the said section four hundred and sixty-six is hereby amended, by adding at the end thereof the words "including the keeping of cattle and pigs or swine, and cattle, or cow byres and piggeries."

Sec. 466, sub-s. 17, amended.

14. Sub-section thirty-two of the said section (four hundred and sixty-six) is hereby repealed, and the following substituted in lieu thereof:

Sec. 466, sub-s. 32 repealed, and new sub-sec. substituted.

(32) For regulating the construction of chimneys as to dimensions and otherwise, and for enforcing the proper cleaning of the same, and for compelling manufacturers and others to have such chimneys or other apparatus as shall consume the smoke or prevent the same from fouling the atmosphere or being carried by the wind or otherwise to other shops, houses, or premises, to the inconvenience or injury of the neighbouring premises or residents therein.

15. The said section four hundred and sixty-six is amended by adding thereto as sub-sections fifty-six and fifty-seven the following:—

Sec. 466, amended.

(56) For regulating the erection and maintenance of telegraph and telephone poles and wires within their limits;

(57) For preventing children from riding on the platform of cars or behind waggons and other vehicles, and for preventing accidents arising from such causes.

16. In case it appears that any municipality in whose jurisdiction an original road, or allowance for road is situate, has opened, or is opening, that which they take and believe to be the true site of the same, and in case the municipality, their officers and servants, have acted or are acting in good faith,

Municipality and officers thereof protected from actions arising from mistakes in opening

road allow-  
ances.

and have taken all reasonable means to inform themselves of the correctness of their line and work, and in case it appears that the road being opened although not or not altogether upon the true line of the original road, or allowance for road, is nevertheless, from any difficulty in discovering correctly the true line, as near to or as nearly upon the true line as under the circumstances could then be ascertained, no action shall be brought by any person against the municipality, their officers or servants, for or in respect of the opening of such road, or allowance for road, or for any other act or matter whatsoever connected with or arising from the same.

Proof to be  
given in action  
by persons  
claiming land  
taken by mu-  
nicipality as  
road allow-  
ance.

**17.** In case any one having title to the land, or to any part of it, taken by the municipality as aforesaid for the original road, or allowance for road, claims to recover the land, or any part of it so taken for such road, he shall not recover in such action unless he shew the true site of the original allowance to which the road opened by the municipality can be safely and permanently removed, nor unless he prove that he demanded in writing, before action, the removal of the road to such new locality, and specified therein the grounds upon which he relies for the recovery of the land he claims, and the removal of the road, nor unless he prove also that the continuance of the road in its then situation is a substantial injury and damage to him

Municipality  
may make  
compensation.

**18.** The municipality shall, however, in any case respecting the opening of an original road, or road allowance, make any person claiming or having title to the same, reasonable compensation in full of all claims, and as a final settlement of the same: Provided the claims for such compensation shall be made within one year from the time of the laying out or taking possession of such road by the municipality or its officers, or the part thereof in respect of which compensation is claimed, and in the event of the parties not agreeing as to the amount or terms of such compensation, the same shall be ascertained and the payment thereof enforced, under the provisions of the municipal Act relating to arbitrations.

Sec. 525, sub-s.  
2, amended.

**19.** Sub-section two of section five hundred and twenty-five of the said Act is hereby amended, by inserting after the word "up," in the first line of the said sub-section, the words "leasing or," and by striking out the word "and" in the said first line.

Sec. 526,  
amended.

**20.** Section five hundred and twenty-six of the said Act is hereby amended by adding after the word "sell" in the second line, the words "or lease."

Sec. 526, sub-s.  
2, amended.

**21.** Sub-section two of the said section five hundred and twenty-six is amended, by adding after the word "sale" in the first line thereof, the words "or lease."

Sec. 526, sub-s.  
3, amended.

**22.** Sub-section three of the said section is amended by adding after the word "conveyance" in the first line thereof, the words "or lease," and by adding after the words "purchaser or purchasers" the words "lessee or lessees."

Sec. 531 (42  
Vic., c. 31, s.  
27), amended.

**23.** Sub-section twenty-seven of section five hundred and thirty-one of the Municipal Amendment Act of 1879, is amended by adding thereto the following:—

“ Or the said council may, at their option, instead of such publication in a newspaper, by resolution direct that a copy of such by-law and notice, written or printed, or partly written and partly printed, be served upon each of the several owners, 5 their lessees or occupants, or upon the agent or agents of such owners, or left at their places of residence with some grown up member of the family, or where the land is unoccupied and the owner or owners, or their agent or agents, do not reside within the municipality, may cause to be sent by registered letter to 10 the last known address of such owner or owners, a copy of such by-law and notice, and the said by-law shall not be finally passed until after the expiration of three weeks from the last of such services, and the clerk shall keep on file in his office a statutory declaration or declarations by the party or parties 15 making such service or services, and the manner in which the same were effected.

24. Section five hundred and forty-four, of the said Act is hereby repealed, and the following substituted therefor :

Sec. 544 repealed, and new section substituted.

(544) If a drain already constructed, or hereafter constructed 20 by a municipality, is used as an outlet by another municipality, company, or individual, or if any municipality, company or individual, by any means cause waters to flow upon and injure the lands of another municipality, company, or individual, the municipality, company, or individual using such drain as an 25 outlet, or otherwise, or causing waters to flow upon and injure such lands, may be assessed in such proportion and amount as may be ascertained by the engineer, surveyor, or arbitrators, under the formalities provided in the foregoing sections, for the construction and maintenance of such drain so used as an 30 outlet as aforesaid ; or for the construction and maintenance of such drain or drains as may be necessary for conveying from such lands the waters so caused to flow upon and injure the same.

25. Section twenty-four of chapter thirty-one of the Acts 35 passed in the forty-second year of Her Majesty's reign is hereby repealed, and the provisions of the Municipal Act, chapter one hundred and seventy-four of the Revised Statutes, affected by the said enactment shall be revived and stand as if the said section had not been passed ; but this section shall not affect 40 or apply to any city in which by the special Act of incorporation thereof, provision is made for the appointment, control and management of the police by the council.

42 Vic., c. 31, s. 24, repealed.

26. It shall and may be lawful for the councils of cities and towns having established police forces and fire brigades to pass 45 by-laws for aiding and assisting by annual money grant or otherwise, as they may deem expedient, the establishment and maintenance of superannuation and benefit funds for the benefit of the members of such police force and fire brigades, and of their families respectively.

Superannuation and benefit funds for fire and police force in cities and towns.

27. It shall and may be lawful for the council of any city, town, incorporated village, county or township, upon any claim being made or action brought against any such municipality for damages for alleged negligence on the part of such municipality, to make, tender, or pay into court, as the case may 55 be, such amount as they may consider proper compensation for

Tender of compensation in actions for negligence.

the damage sustained, and in the event of the non-acceptance by the claimant of such tender or the amount paid into court, and the action being proceeded with, and a verdict being obtained for a less amount than the amount so tendered or paid into court, the costs of suit shall be awarded to the defendants, and set off against any verdict which shall have been obtained against them, and no such action shall be brought until one month shall have elapsed after notice of action. 5

Sub-section 2,  
sec. 551  
amended.

28. Sub-section two of section five hundred and fifty-one of the Municipal Act is hereby amended by striking out the words "by an annual rate in the dollar on the real property so benefited according to the value thereof, exclusive of improvements," occurring at the end thereof, and substituting in lieu thereof the words: "by means of an annual special rate on the real property so benefited according to the frontage thereof": Provided, nevertheless, that no council shall pass any by-law pursuant to any petition presented to such council before the passing of this Act, such petition having been duly signed under the provisions of sections five hundred and fifty-one and five hundred and fifty-two of the Municipal Act as amended by the Act passed by the Legislature of this Province in the forty-third year of the reign of Her Majesty, chaptered twenty-seven, until after one month shall have elapsed from the passing of this Act, and then only subject to the following conditions, that is to say: Any owner or owners who may have signed any such petition shall be at liberty to withdraw his or their name or names, from any such petition within the time limited as aforesaid by notice in writing to the council, or by presenting to such council a counter petition in that behalf; but, nevertheless, any owner or owners of real property which will be directly benefited by and assessable for the proposed improvement, and who may not have signed the petition therefor may, within three months from the passing of this Act, require their names to be added to such petition for such improvement, by supplementary petition presented to such council in that behalf; and if, after removing from such original petition the names of owners, if any, who shall have signed any such counter petition, or given any such notice in writing, and adding thereto the names of owners, if any, who shall have signed any such supplementary petition, there shall remain the names of at least two-thirds in number of the owners representing one-half in value of such real property so to be benefited and assessed as aforesaid, such council may pass such by-law subject to the provisions of the Municipal Act so amended as aforesaid, and of the provisions of this Act. 45

Debentures  
heretofore  
issued, on  
which pay-  
ment has been  
made for two  
years, to be  
good and valid.

Proviso.

29. Where any debentures have heretofore been issued by any municipality under any by-law passed by such municipality, and the interest on such debentures and the principal of such thereof (if any) as shall heretofore have fallen due, has been heretofore paid for the period of two years or more, by the municipality, such by-law and the debentures issued thereunder, or such thereof as may yet be unpaid, shall be valid and binding upon the corporation, and shall not be quashed or set aside on any ground whatever: Provided, that this clause shall not affect any by-law, debenture, or debt which is the subject of any action or proceeding now pending and brought to quash or set aside such by-law or debenture, or any by-law or 65

debenture, the validity of which is questioned in any suit or proceeding now pending, to which the corporation issuing the same is a party.

30. Every by-law passed by any municipality for contracting  
 5 any debt, by the issue of debentures for a longer term than  
 one year, and for levying rates for the payment of such debts, on  
 the ratable property of the municipality, or any part thereof,  
 shall be registered by the clerk of such municipality, if a county,  
 in the registry office for the county in which the county town is  
 10 situate, or in case of local municipalities in the registry office  
 of the registration division in which the local municipality is situate,  
 within two weeks after the final passing thereof by  
 such municipality; and every such by-law so registered and the  
 debentures issued thereunder, shall be absolutely valid and  
 15 binding upon such municipality, according to the terms thereof,  
 and shall not be quashed or set aside on any ground whatever,  
 unless an application or suit to quash or set aside the same  
 be made to some court of competent jurisdiction within three  
 months from the registry thereof, and a certificate under the  
 20 hand and seal of the clerk of the said court, stating that such  
 suit or proceeding has been brought or application made shall  
 have been registered in said registry office within such period  
 of three months: Provided, further, that if such suit or proceeding  
 be dismissed, in whole or in part, then the said by-law or  
 25 so much thereof as is not the subject of said application, or  
 not quashed upon such application, shall be absolutely valid  
 and binding, according to the terms thereof, on the expiration  
 of three months from the date of the registration of such by-law;  
 upon the dismissal of any such suit or proceeding, a certificate  
 30 to that effect may be registered in the said registry office:  
 Provided further that notice of the passing of every by-law  
 to which this section refers, and which has not been submitted  
 to the ratepayers, shall immediately after the registration of  
 such by-law be published in some public newspaper, published  
 35 either within the municipality, or in the county town, or in a  
 public newspaper in an adjoining local municipality, as the  
 council may by resolution designate, and the publication shall,  
 for the purpose aforesaid, be continued in at least one number  
 of such paper each week, for three successive weeks; but  
 40 nothing herein contained shall make it obligatory upon any  
 city, town, or incorporated village to register any by-laws providing  
 for the issue of debentures passed under the provisions of the  
 Municipal Act relating to local improvements, but the same may be so  
 registered at the option of the municipality.

By-laws creating debts to be registered.

45 31. The notice required to be published by the foregoing section, shall be in the form following or to the like effect: Form of notice.  
 Notice is hereby given that a by-law was passed by the  
 of of on the  
 day of A.D., 18 , providing for the issue of  
 50 debentures to the amount of \$ for  
 the purpose of and that such by-law was  
 registered in the registry office of the county  
 of on the day of  
 A.D., 18  
 55 Clerk.

Manner of registration.

**32.** Said by-laws shall be registered in the way and manner provided by the Revised Statutes of Ontario, chapter one hundred and seventy-six, and the registrar shall be paid the sum of two dollars for registration thereof.

Form of certificate of pending suit.

**33.** The certificate first referred to, in the second section hereof, shall be in the form or to the effect following:—

In the (*name of court*)

This is to certify that in a certain suit or proceeding in this court, entitled \_\_\_\_\_ the validity of by-law No. \_\_\_\_\_ of the \_\_\_\_\_ entitled a by-law \_\_\_\_\_ has been called in question (*if a portion only of the by-law is called in question, state the fact*).

Dated,

(Signed), A. B.  
Clerk of

{ Seal. }

15

Form of certificate of dismissal of suit.

And the certificate of dismissal of such suit or proceeding shall be in the form or to the effect following:—

In the (*name of court*)

I hereby certify that the suit or proceeding in this court, entitled \_\_\_\_\_ calling in question the validity of \_\_\_\_\_ by-law No. \_\_\_\_\_ of the \_\_\_\_\_ has been dismissed (*or if dismissed in part and granted in part, set out the order made, verbatim*).

Dated,

(Signed,) A. B.  
Clerk of

{ Seal. }

25

And the registrar shall be entitled to the sum of fifty cents for registering either of said certificates.

R. S. O., c. 174 s. 320, repealed and new section substituted

**34.** Section three hundred and twenty of the Municipal Act is hereby repealed and the following substituted therefor:—

The notice to be appended to every copy of the by-law for the purpose aforesaid shall be to the effect following:—

Notice.—The above is a true copy of a by-law passed by the municipal council of the \_\_\_\_\_ of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_ and approved by His Honour, the Lieutenant Governor in Council, on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_ (where such approval is required to give effect to such by-law): And all persons are hereby required to take notice that any one desirous of applying to have such by-law, or any part thereof, quashed, must make his application for that purpose to one of her Majesty's superior courts of common law, at Toronto, within two months next after the publication of this notice once a week for three successive weeks, in the newspaper called the \_\_\_\_\_ or he will be too late to be heard in that behalf.

Sec. 321 amended.

**35.** Section three hundred and twenty-one of the said Act is hereby amended, by striking out the words, "before the end of the term," in the second line, and substituting therefor the words, "within two months."

**36.** Section three hundred and eighty-eight of the said Act Sec. 388  
 is hereby amended, by striking out all the words after "said amended.  
 by-law," in the seventh line, and substituting the following,  
 "has received the assent of the electors where necessary, and  
 5 that no successful application has been made to quash the same  
 within the time limited in the notice of promulgation."

**37.** All Acts or parts of Acts inconsistent with or at variance Inconsistent  
 with this Act are hereby repealed. enactments re-  
pealed.

**38.** This Act shall be read with and as part of the said  
 10 Municipal Act.

BILL.

The Municipal Amendment Act of 1881.

First Reading,	1881.
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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## The Assessment Amendment Act, 1881.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section twelve of the Assessment Act (chapter one hundred and eighty of the Revised Statutes of Ontario.) is hereby amended as follows, viz.: There shall be added to the assessment roll for every township three additional columns immediately after column twenty-six, to be headed respectively, "Birth," "Death," "Registered," and to be numbered twenty-seven, twenty-eight and twenty-nine, and it shall be the duty of the assessor or assessors when making the annual assessment to inquire of each resident taxable party whether there has been a birth or death in the family within the previous twelve months, and if either, whether the same has been registered or not; if it has not been registered the assessor shall put the figure 1 opposite the name in the column headed "Birth" or "Death," as the case may be; if registered, the letter "R" in the column (twenty-nine) set apart for "Registered." If any assessor refuses or neglects to comply with the requirements of this section, upon conviction thereof before any court of competent jurisdiction, he shall be subject to the penalty imposed by section one hundred and eighty-nine of the Assessment Act. This section shall take effect from and after the first day of January next.
2. Section forty-five of the said Act as amended by section twenty of chapter twenty-seven of the Acts passed in the forty-third year of Her Majesty's reign, is amended by inserting the word "townships" after the word "towns," in the first line of the said section.
3. Sub-section fifteen of section fifty-six of the said Act is amended by adding the following:—"And in all cases which come before the said court, it may increase the assessment or change it by assessing the right party, the clerk giving the latter or his agent four days' notice of such assessment, within which time he must appeal to said court if he objects to such assessment."
4. Section fifty-six of the said Act is amended by adding thereto the following as sub-section twenty:—  
(20) In case any person appeals against his assessment upon any ground, the court of revision or the judge of the county court, as the case may be, may re-open the whole question of the assessment, so that omissions or errors in the assessment

R.S.O., c. 180.  
s. 12, amended.

Three additional columns added to assessment roll.

Sec. 45, (43  
Vic., c. 27, s.  
20,) amended.

Sec. 56, sub-s.  
15, amended.

Sec. 56  
amended.

may be corrected, and the accurate amount for which the assessment should be made be placed on the assessment roll by the court or judge before handing the same over to the clerk of the municipality.

Sec. 93  
amended.

5. Section ninety-three of the said Act is amended by adding thereto the following as sub-section two:—

If at any time after demand has been made by the collector as aforesaid, and before the expiry of the fourteen days mentioned in this section, the collector has good reason to believe that any party by whom taxes are payable, is about to remove his goods and chattels out of the municipality before the fourteen days has expired, and makes affidavit to that effect, before the mayor or reeve of the municipality, or before any justice of the peace, such mayor, reeve or justice shall issue a warrant to the collector, authorizing him to levy for the taxes and costs, in the manner provided by this Act, although the fourteen days after demand may not have expired.

In cities the council may fix the time for return of collectors' rolls.

6. The provisions of sections one hundred and one and one hundred and two of the said Act shall not hereafter be held to apply to cities, but the council of every city may, by by-law, fix the times for the return of the collectors' rolls and any enlargements of the same.

Sec. 173 repealed, and new section substituted

7. Section one hundred and seventy-three of the said Act is hereby repealed, and the following substituted therefor:—

173. In cases where a new local municipality is formed partly from two or more municipalities situate in different counties, the collection of arrears of taxes due at the time of formation shall be made by the treasurer of the county in which the new municipality is situate, if such new municipality is a township or village, or if such new municipality is a town, by the treasurer of such town; and for the purpose of enabling him to make such collection, the treasurer or the treasurers of the other county or counties from which any portion of such new municipality is detached, shall immediately upon the formation thereof, make out lists of the arrears of taxes then due in their respective portions, and transmit the same to the treasurer of the county in which the new municipality is situate, or of the town (as the case may be); and where a new municipality is formed from two or more municipalities situate in any one county, the treasurer shall keep a separate account for such new municipality.

8. Where any municipality or part of a municipality has been or may be hereafter separated from one county and included in another after a return has been made to the treasurer of the county to which it formerly belonged, of lands in arrear for taxes, but such lands have not been advertised for sale by the treasurer of such former county, such treasurer shall return to the treasurer of the county to which such territory belongs a list of all the lands within such territory returned as in arrear for taxes and not advertised; and the treasurer and warden of the county to which the territory belongs shall have power respectively to take all the proceedings which treasurers and wardens under the said Assessment Act can take for the sale and conveyance of lands in arrear for taxes; but in case the lands

in such territory have been advertised before the separation, the sale of such lands shall be completed in the same manner as if the separation had not taken place, and conveyance of lands previously sold shall be made in like manner. (*Vide* R. S. O., c. 5 180, s. 131, sub-sec. 2.)

9. In cases where a new county has been or shall be formed in whole or in part from two or more municipalities situate in different counties the collection of non-resident taxes due at the time of formation in respect of lands situate in the new county 10 which have not been advertised for sale shall be made by the treasurer of the new county; and for the purpose of enabling him to make such collection, the treasurers of the other counties formerly having jurisdiction over the respective portions of territory included in the new county shall make out lists of the 15 non-resident taxes then due in their respective portions, and transmit the same to the treasurer of the new county.

10. The treasurer and warden of the county in which such new municipality, if it be a township or village, is situate, and the treasurer and mayor of such new municipality, if it be a 20 town, shall have power, respectively, to take for the collection of such arrears of taxes all the proceedings which treasurers and wardens, or treasurers and mayors, under this Act, can take for the sale and conveyance of lands in arrears for taxes, and in case the lands in such new municipality have been adver- 25 tised by the treasurer or treasurers of the county or counties of which such new municipality formed part before its formation, the sale of such lands shall be completed in the same manner as if such new municipality had not been formed.

Collection of  
arrears of  
taxes in new  
municipalities.

11. Upon the incorporation of any new town, in any county, 30 the county treasurer shall make out a list of all arrears of taxes then due and unpaid in his books upon lands situate in the newly incorporated town, and transmit the same to the treasurer of the town, who, after receipt of said list, shall have, with the mayor, all the powers possessed by the county treas- 35 urer and warden for the collection of such taxes and for enforcement of the same by sale; but in such list the county treasurer shall not include any lot then advertised for sale for taxes.

On incorpora-  
tion of a town,  
county treas-  
urer to trans-  
mit list of  
arrears to town  
treasurer.

12. Section ten of the said Act is amended by adding the 40 following thereto: "but no assessor or collector shall hold the office of clerk or treasurer."

2nd Session, 4th Legislature, 44 Vic, 1881.

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BILL.

The Assessment Amendment Act, 1881.

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First Reading,            March, 1881.

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TORONTO:  
PRINTED BY C. BLACKETT ROBINSON.

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No. 136.]

**BILL.**

[1881.

An Act respecting the Appointment of Guardians for  
Infants.

**H**ER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows :—

1. The Surrogate Court for the county within which an  
5 infant resides may appoint the father of such infant to be his  
or her guardian ; or may with the consent of the father appoint  
some other suitable person or persons to be the guardian or  
guardians of such infant. Appointment  
of guardian by  
Surrogate  
Court.
2. A guardian appointed under this Act shall have the like  
10 authority over the person and property of the infant as a  
guardian appointed under the first section of the Revised Statute  
respecting guardians of infants, and shall give security in the  
same manner.
3. Where the infant is of the age of fourteen years or over,  
15 no appointment shall be made under this section without the  
consent of the infant.

BILL.

An Act respecting the Appointment of  
Guardians for Infants.

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First Reading, 2nd March, 1881.

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The ATTORNEY-GENERAL.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

## An Act respecting Aid to certain Railways.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited and known as "The Railway Aid Title Act, 1881."

2. Subject to the conditions of this Act, aid shall be granted out of the Consolidated Revenue Fund, to the undermentioned railway companies for the construction of the portions of railway hereinafter mentioned, that is to say:—

10 (1) The Erie and Huron Railway Company from Rondeau, on Lake Erie, to Dresden, including the Wallaceburg branch, from a point on the main line to the village of Wallaceburg, a distance, including the said branch, of about forty miles, at the rate of one hundred and fifty-three dollars and seventy-five cents per mile per annum, payable half-yearly for twenty years.

Erie and  
Huron Rail-  
way.

(2) The Stratford and Huron Railway Company, from Harriston to Warton, a distance of about sixty-two miles, at the rate of one hundred and fifty-three dollars and seventy-five cents per mile per annum, payable half-yearly for twenty years.

Stratford and  
Huron Rail-  
way.

(3) The Georgian Bay and Wellington Railway Company, from Mount Forest to Durham, a distance of about sixteen miles, at the rate of one hundred and fifteen dollars and thirty-two cents per mile per annum, payable half-yearly for twenty years.

Georgian Bay  
and Wellin-  
gton Railway.

3. The payment in aid of railways under this Act shall be computed in manner following, that is to say:—

Computation  
of aid.

(a) If the portion of the railway for which payment is made has been completed between the first day of January and the first day of July, the payments shall be computed as commencing on the first day of January of the preceding year;

(b) And if the portion for which the payment is made has been completed between the first day of July and the thirty-first day of December, the payment shall be computed as commencing on the first day of July of the preceding year.

4. All of the said grants of aid are respectively subject to the following conditions:—

Conditions of  
aid.

(1) The Lieutenant-Governor in Council may require any railway company so aided, or any railway company formed by an amalgamation of any company or companies aided under this Act with any other railway company or companies which

shall have received aid from Provincial funds, to enter into an agreement or agreements with any other railway company or companies, containing such terms and details as the Lieutenant-Governor in Council may approve of, in order to secure running powers or rights of use to such company or companies 5 over the line or portion of line of railway of the company aided under this Act, or former Acts, or in the discretion of the Lieutenant-Governor in Council, for the haulage thereover of the cars and traffic of such other company or companies, upon such terms as, in default of agreement between the 10 respective companies, may be settled upon by the Lieutenant-Governor in Council.

(2) No payments shall be made to any of the said companies in respect of the said grants of aid for any portion of their railway, until the Commissioner of Public Works has reported 15 to the Lieutenant-Governor in Council, that such company has completed the portion of its road in respect of which payment is to be made (including such sidings and station-houses as the Commissioner may think necessary for the accommodation of the public) within the period for completing the rail- 20 way or portion thereof named in the Acts relating to the company, or by this Act, or such other period as may by this or any other Act be fixed for such purpose.

(3) Payments may be made as portions of the railway, not less than ten continuous miles, are completed as aforesaid; and 25 in cases where the whole distance aided is less than ten miles, then for such distance, except that in the case of the Erie and Huron Railway no payments shall be made until the whole distance of the main and branch lines, with the necessary sidings and stations, is fully completed as aforesaid. 30

(4) After a company has complied with the conditions necessary, and the Commissioner has reported as aforesaid, scrip or certificates may be issued for and in respect of the said grant, which scrip or certificates may be in the form of Schedule "A" to this Act, or to the like effect; and when signed by the 35 Treasurer of this Province and the accountant in his department, and countersigned by the auditor, every such certificate shall be valid and binding on the Province, according to its tenor and effect; and it shall not be necessary for any transferee, in good faith of such certificate, to enquire into, or obtain proof 40 of, any facts stated therein, all of which shall be deemed conclusive as against the Province, in favour of such transferee.

(5) The conditions contained in section twenty-six of chapter one hundred and sixty-six of "The Revised Statutes of Ontario," shall apply to all companies receiving aid under this Act. 45

(6) Each of the said companies shall furnish such information of the progress of the works on the railway of the company as may from time to time be required by the Commissioner of Public Works; and also such statistical or other details, accounts and information, as from time to time may be 50 required from them by the Commissioner after completion of the railway.

(7) In order to secure the continuous running of such railways aided by this Act, the iron or steel rails laid from time to time by any of the said railways are not to be removed by 55 the company, or by the authority of the company, without the consent of the Lieutenant-Governor in Council, obtained on the recommendation of the Commissioner of Public Works.

6. The Lieutenant-Governor in Council may also grant such bonus, subsidy, or annual payment to any company now or hereafter to be incorporated, not in excess of a present payment of two thousand eight hundred and fifty dollars per mile, in such mode and according to such terms and conditions as will secure the construction of a line of railway extending from a point in the district of Muskoka as far north as Gravenhurst, so as to connect the present Ontario system of railways with Sault Ste. Marie; the total mileage not to exceed three hundred miles; the grant of such bonus, subsidy, or annual payment to any company shall be provisional, until sanctioned by resolution of the Legislative Assembly; and shall only be upon and subject to proper conditions for securing full running powers and other rights of user for other railways; and also for securing equal facilities for the receipt, transfer and transportation to, from, or over the said railway of the traffic of other connecting lines of railway and the imposing such conditions as will secure the establishing, levying and collecting equal tolls, rates and charges in respect of the traffic received from or to be delivered to other railways, and upon and subject to such other conditions for securing the due application of the grant, the construction of the railway, and otherwise as the Lieutenant-Governor in Council may require, and no agreement in the premises shall be operative until ratified by resolution of the Legislative Assembly.

Aid to railway  
from Muskoka  
to Sault Ste.  
Marie.

### SCHEDULE "A."

#### PROVINCE OF ONTARIO, CANADA.

#### *The Railway Aid Act, 1881. Certificate for payment.*

No.

This is to certify that under and by virtue of a certain Order made by the Lieutenant-Governor of the Province of Ontario in Council, and dated the \_\_\_\_\_ under the provisions of "The Railway Aid Act, 1881," the

Railway Company is entitled to receive from the Province of Ontario, a semi-annual subsidy of \_\_\_\_\_ dollars, payable on the thirtieth day of June, and on the thirry-first day of December, in each and every year, until and inclusive of the thirty-first day of December, one thousand eight hundred and \_\_\_\_\_

, and it is hereby further certified that the Province of Ontario will, upon the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, and upon the delivery of this certificate to the Treasurer of the said Province at Toronto, pay to the said Company or its Assigns, the sum of \_\_\_\_\_ dollars, and \_\_\_\_\_ cents, being the amount of subsidy payable to the said Company upon such day. This certificate and any interest in the sum mentioned therein shall not pass or be transferable except by transfer made by special endorsement thereon.

Issued by the Treasurer of Ontario, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 18 \_\_\_\_\_, in accordance with Order in Council dated \_\_\_\_\_ day of \_\_\_\_\_, A.D. 18 \_\_\_\_\_

*Treasurer.*

*Accountant.*

Countersigned by

*Auditor.*

BILL.

An Act respecting Aid to certain Railways.

First Reading, 2nd March, 1881.

Hon. Mr. PARDEE.

An Act for granting to Her Majesty certain sums of money to defray the expenses of Civil Government for the year one thousand eight hundred and eighty-one and for other purposes therein mentioned.

MOST GRACIOUS SOVEREIGN :

WHEREAS it appears by Messages from His Honour the Honourable John Beverley Robinson, Lieutenant-Governor of Ontario, and the Estimates accompanying the same, that the sums hereinafter mentioned in the Schedule to this Act are required to defray certain expenses of the Civil Government of this Province, and of the public service thereof, and for other purposes, for the year one thousand eight hundred and eighty-one ; may it therefore please Your Majesty that it may be enacted, and it is hereby enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, as follows :

1. From and out of the Consolidated Revenue Fund of this Province, there shall and may be paid and applied a sum (not exceeding in the whole) of two millions three hundred and fifty-six thousand one hundred and sixteen dollars and seventy-three cents, for defraying the several charges and expenses of the Civil Government of this Province for the year one thousand eight hundred and eighty-one, as set forth in Schedule "A" to this Act ; and for the expenses of Legislation and salaries of the officers of the Government and Civil Service for the month of January, one thousand eight hundred and eighty-two, as set forth in Schedule "B" to this Act ; and for an advance on account of Mercer Estate, as set forth in Schedule "C" to this Act.
2. Accounts in detail of all moneys received on account of this Province, and of all expenditures under Schedule "A" of this Act shall be laid before the Legislative Assembly at its next sitting.
3. Any part of the money, under Schedule "A," appropriated by this Act out of the Consolidated Revenue, which may be unexpended on the thirty-first day of December one thousand eight hundred and eighty-one, shall not be expended thereafter, except in the payment of accounts and expenses incurred on or prior to the said day, and all balances remaining unexpended after the twentieth day of January next shall lapse and be written off.
4. The due application of all moneys expended under this Act out of the Consolidated Revenue shall be accounted for to Her Majesty.

Preamble.

\$2,356,116 73  
granted out of  
the Consoli-  
dated Revenue  
Fund for cer-  
tain purposes.

Accounts to be  
laid before the  
Legislature.

Unexpended  
moneys.

Expenditure to  
be accounted to  
Her Majesty.

## SCHEDULE "A."

SUMS granted to Her Majesty by this Act for the year one thousand eight hundred and eighty-one, and the purposes for which they are granted.

## CIVIL GOVERNMENT.

*To defray the expenses of the several Departments at Toronto.*

Government House .....	\$5,580 00
Lieutenant-Governor's Office .....	3,430 00
Executive Council and Attorney-General's Office.	14,790 00
Education Department .....	20,690 00
Crown Lands Department .....	44,750 00
Department of Public Works .....	19,094 00
Treasury Department .....	18,700 00
Department of Agriculture .....	1,400 00
Inspection of Public Institutions .....	7,550 00
Secretary and Registrar's Office .....	26,225 00
Department of Immigration .....	1,500 00
Miscellaneous .....	14,600 00
	<hr/> \$178,309 00

## LEGISLATION.

To defray expenses for Legislation .....	\$108,900 00
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## ADMINISTRATION OF JUSTICE.

To defray expenses of:—

Court of Chancery .....	\$20,615 00
Court of Queen's Bench .....	9,620 00
Court of Common Pleas .....	5,660 00
Superior Judges and Court of Appeal .....	16,320 00
Practice and other Courts .....	4,900 00
Criminal Justice .....	154,000 00
Miscellaneous Justice .....	70,475 00
	<hr/> \$281,590 00

## EDUCATION.

To defray expenses of:—

Public and Separate Schools .....	\$240,000 00
Inspection of Public and Separate Schools .....	31,045 00
Schools in New and Poor Townships .....	13,500 00
Collegiate Institutes and High Schools .....	84,500 00
Inspection of Collegiate and High Schools .....	7,600 00
Departmental Examinations .....	9,300 00
Training of Public School Teachers .....	10,350 00
Superannuated High and Public School Teachers	57,833 13
Normal and Model Schools, Toronto .....	22,650 00
Normal School, Ottawa .....	19,042 60
Educational Depository .....	9,155 00
Miscellaneous Expenses of Education .....	875 00
	<hr/> \$505,850 73

## PUBLIC INSTITUTIONS—MAINTENANCE.

To defray expenses of:—

Asylum for the Insane, Toronto. ....	\$83,176	00
Asylum for the Insane, London. ....	103,548	00
Asylum for the Insane, Kingston. . . . .	54,834	00
Asylum for the Insane, Hamilton. ....	58,004	99
Asylum for the Insane, Orillia. ....	19,674	00
Provincial Reformatory, Penetanguishene. ....	30,435	54
Central Prison, Toronto. ....	68,470	00
Institution for the Deaf and Dumb, Belleville. ....	36,623	00
Institution for the Blind, Brantford. ....	30,797	60
School of Agriculture, Guelph. ....	20,930	00
School of Practical Science, Toronto. ....	5,400	00
Mercer Reformatory for Females, Toronto. ....	23,520	27
		<hr/>
		\$535,412 80

## IMMIGRATION.

To defray expenses of:—

Agencies in Europe. ....	\$4,800	00
Agencies in Canada. ....	3,400	00
Dominion Government for services by its Agents. . . . .	15,000	00
Carriage of Immigrants in Ontario, including Maintenance. ....	8,000	00
Provisions for same, including Medical attendance. . . . .	9,000	00
Incidentals . . . . .	1,000	00
		<hr/>
		\$41,200 00

## AGRICULTURE, ARTS, LITERARY AND SCIENTIFIC INSTITUTIONS.

To defray expenses of a grant in aid of:—

Electorial Division Societies, 81 at \$700. ....	\$56,700	00
Electorial Division Society, 1 at 550. ....	550	00
Electorial Division Societies, 6 at 350. ....	2,100	00
“ “ “ outlying Districts. . . . .	550	00
Fruit Growers' Association. ....	1,800	00
Entomological Society. ....	1,000	00
Dairymen's Associations. ....	3,000	00
Agricultural Association. ....	10,000	00
Poultry Associations. ....	700	00
For sundry services in connection with Agriculture and Arts, such as investigation of diseases in animals and crops, and of ravages of insects; and for agricultural instruction, dairy products, and other charges not otherwise provided for . . . . .	2,000	00

## ARTS:

Mechanics, Institutes . . . . .	25,000	00
Art Union, Toronto. ....	500	00
School of Art and Design, Toronto . . . . .	1,100	00
School of Art and Design, London. ....	800	00

## LITERARY:

Canadian Institute, Toronto . . . . .	750	00
Institut Canadien, Ottawa . . . . .	300	00
Athenæum, Ottawa. ....	300	00
		<hr/>
		\$107,150 00

## HOSPITALS AND CHARITIES.

To defray expenses of a grant in aid of:—

Hospitals and Institutions mentioned in Schedule A of Statute, 37 Vic., chap. 33 .....	\$47,825 37
Institutions in Schedule B.....	18,026 31
Institutions in Schedule C.....	12,190 30
Registers and Forms for Charities.....	100 00
	<hr/> \$78,141 98

## MISCELLANEOUS EXPENDITURE.

To defray Miscellaneous Expenditure as follows:—

License Law.....	\$2,000 00
Collection of revenue for law stamps and licenses.....	1,500 00
Marriage Licenses.....	400 00
Ontario Rifle Association.....	600 00
Insurance of Public Buildings and Furniture.. .	1,000 00
Expenses of Elections.....	2,000 00
Expenses of Contested Elections.....	1,000 00
Revision Voters' Lists.....	1,000 00
Gratuities.....	10,250 00
Allowance to late Superintendent of Education ..	4,000 00
Brock's Monument.....	500 00
Allowance to Counties under provisions of 30 Vic. chapter 31.....	6,557 50
Grant to aid in establishing a market for Ontario manufactures and agricultural products in European and Foreign Countries .....	1,770 00
Aid to <i>Sanitary Journal</i> .....	500 00
Telephone Service.....	500 00
Expenses taking Insane People to Asylums, and Boys and Females to Reformatories .....	6,000 00
Expenses of Agricultural Commission .....	1,750 00
To defray the expenses of maintaining the rights of the Province to the territory recently awarded.....	10,000 00
Expenses <i>re</i> London University Examination and Gilchrist Scholarship .....	150 00
Expenses of preventing prize fight .....	566 23
	<hr/> \$52,043 73

## PUBLIC BUILDINGS.

To defray expenses at the works at the Asylum for the Insane, Toronto .....

Asylum for the Insane, Toronto.....	\$4,030 00
Asylum for the Insane, London.....	9,352 00
“ “ “ Hamilton.....	8,100 00
“ “ “ Kingston .....	15,600 00
“ “ Idiots, Orillia.....	1,269 00
Reformatory, Penetanguishene .....	22,400 00
Reformatory for Females, Toronto.....	4,300 00
Central Prison, Toronto .....	4,500 00
Deaf and Dumb Institute, Belleville.....	6,750 00
Blind Institute, Brantford .....	4,600 00

School of Agriculture, Guelph .....	\$24,750 00
Normal School and Education Office, Toronto....	2,000 00
Normal School, Ottawa .....	7,000 00
School of Practical Science, Toronto.....	3,400 00
Osgoode Hall, Toronto.....	1,000 00
Government House, Toronto .....	4,000 00
Parliament Buildings .....	1,000 00
District of Algoma .....	900 00
Thunder Bay District.....	800 00
Nipissing District .....	200 00
Parry Sound District .....	3,650 00
Muskoka District.....	4,700 00
New Territory.....	3,000 00
	<hr/>
	\$137,241 00

## PUBLIC WORKS.

Muskoka River and Lakes Works .....	\$2,100 00
Mary's and Fairy Lakes Works .....	550 00
Gull and Burnt Rivers .....	8,500 00
Scugog River Works.....	5,000 00
Portage du Fort Bridge .....	250 00
Surveys, Inspections and Arbitrations .....	5,000 00
Locks, Dams and Swing Bridges.....	3,000 00
Lock-masters' and Bridge-tenders' Salaries .....	3,200 00
Otonabee River Works.....	1,500 00
Bridge at Des Joachim's Rapids .....	4,000 00
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	\$33,100 00

## COLONIZATION ROADS.

To defray expenses of Construction and Repairs .....	\$96,500 00
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## CROWN LANDS EXPENDITURE.

To defray expenses on account of Crown Lands .....	\$75,000 00
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## REFUNDS.

To defray the expenses of:—	
Education .....	\$1,000 00
Crown Lands .....	10,500 00
Municipalities' Fund.....	24,727 82
Land Improvement Fund.....	9,449 67
	<hr/>
	\$45,677 49

## UNFORESEEN AND UNPROVIDED.

To meet unforeseen and unprovided .....	\$50,000 00
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Total Estimate for 1881 .....

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\$2,326,116 73

## SCHEDULE "B."

SUM granted to Her Majesty by this Act for the year one thousand eight hundred and eighty-two, and the purposes for which it is granted.

To defray the expenses of Legislation and salaries of the officers of the Government and Civil Service for the month of January, 1882.....	\$30,000 00
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 SCHEDULE "C."

SUM granted to Her Majesty by this Act for the year one thousand eight hundred and eighty-one, and the purpose for which it is granted.

Advance on account of Mercer Estate to meet expenditure on Reformatory beyond amount heretofore directed ....	18,000 00
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Total.....	\$2,374,116 73
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BILL.

An Act for granting to Her Majesty certain sums of money to defray the expenses of Civil Government for the year one thousand eight hundred and eighty-one, and for other purposes therein mentioned.

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First Reading, 14th March, 1881.

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Mr. WOOD.

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TORONTO:

PRINTED BY C. BLACKETT ROBINSON.

An Act to regulate the Fees of certain officers and others.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. A fee of three dollars shall be payable to the deputy clerk of the Crown for his own use for entering an action for trial at the assizes or sittings, which sum shall be in lieu of the fees now paid in stamps on passing and entering a record with the deputy clerk of the Crown.

2. The clerks of the county courts (except of the county of York), shall be entitled for services under the Act respecting mortgages and sales of personal property, and the Acts amending the same, to the following fees, in lieu of the fees mentioned for the same services in the twenty-second section of said revised Act:

(1) For filing each instrument and affidavit, and for entering the same in a book as in the said revised Act mentioned, fifty cents;

(2) For filing assignment of each instrument, and for making all proper endorsements in connection therewith, fifty cents.

3. There may be paid to gaol surgeons for the examination of each prisoner whom it is proposed to sentence or remove to the Female Reformatory, including certificate, the fee of *one* dollar; and the tariff of fees established by the Revised Statutes of Ontario, chapter eighty-four, for the services of sheriffs in connection with offenders sentenced or liable to be removed or sentenced to the Central Prison, shall apply also to offenders sentenced or liable to be removed or sentenced to the said Female Reformatory.

4. A fee of one dollar shall be allowed to sheriffs under chapter eighty-four of the Revised Statutes of Ontario, Schedule "Sheriffs, item five," and under chapter eighty-six, Revised Statutes of Ontario, Schedule "Sheriffs, item five," for the discharge from gaol of every prisoner convicted by a police or stipendiary magistrate under thirty-eighth Victoria, chapter forty-seven, Statutes of Canada.

BILL.

An Act to regulate the Fees of certain officers and others.

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First Reading, 3rd March, 1881.
Second " " 1881.
Third " " 1881.

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The ATTORNEY-GENERAL.

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TORONTO :

PRINTED BY C. BLACKETT ROBINSON.







